Testimony

Before
The House Committee on Agriculture

On

Legislative Proposals Amending Title VII of The Dodd-Frank Wall Street Reform and Consumer Protection Act

October 12, 2011

J. Christopher Giancarlo

Executive Vice President,
GFI Group Inc.

Board Member,
Wholesale Markets Brokers Association, Americas

Introduction

Thank you Chairman Lucas, Ranking Member Peterson and members of the Committee for providing this opportunity to participate in today's hearing.

My name is Chris Giancarlo. I am Executive Vice President of GFI Group Inc., a global wholesale broker of swaps and other financial products. I am also a member of the Board and former Chairman of the Wholesale Markets Brokers Association, Americas (the "WMBAA").[1] I am testifying today on behalf of the WMBAA.

I welcome the opportunity to discuss with you legislative proposals amending Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") from the perspective of the primary intermediaries of over-the-counter ("OTC") swaps operating today here in the United States and across the globe.

My company, GFI, and the other members of the WMBAA, each have generations of experience operating at the center of the global wholesale financial markets by aggregating and disseminating prices and fostering trading liquidity for financial institutions around the world. While I am speaking to you now, wholesale brokers, sometimes called "inter-dealer" brokers, are facilitating the execution of hundreds of thousands of OTC trades corresponding to an average of $5 trillion in size across the range of foreign exchange, interest rate, Treasury, credit, equity and commodity asset classes in both cash and derivative instruments.

Our trading systems or platforms are the prototypes for "swap execution facilities," or "SEFs" under the Dodd-Frank Act. There is a misconception that a "swap execution facility" is a new concept created by the Dodd-Frank Act. In fact, long before, during and after the financial crisis, GFI and my WMBAA brethren have been hard at work, employing thousands of people – many here in the United States – executing swaps transactions that account for over 90% of intermediated swaps transactions taking place around the globe.

CFTC Commissioner Bart Chilton had this to say about a recent visit he made to GFI's New York brokerage floor, "I was surprised by what I didn't know. GFI and others like them were always in OTC land. Why would I know about what they do? Well, these are big, dynamic operations, not just a couple of guys in a back room with a phone. I don't think we have a full appreciation of the OTC markets yet."[2]

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[1] The WMBAA is an independent industry body representing the largest inter-dealer brokers ("IDBs") operating in the North American wholesale markets across a broad range of financial products. The WMBAA and its member firms have developed a set of *Principles for Enhancing the Safety and Soundness of the Wholesale, Over-The-Counter Markets*. Using these *Principles* as a guide, the WMBAA seeks to work with Congress, regulators, and key public policymakers on future regulation and oversight of institutional markets and their participants. By working with regulators to make wholesale markets more efficient, robust and transparent, the WMBAA sees a major opportunity to assist in the monitoring and consequent reduction of systemic risk in the country's capital markets. The five founding members of the WMBAA are BGC Partners; GFI Group; ICAP; Tradition and Tullett-Prebon. More about the WMBAA can be found at: www.WMBAA.org.

[2] Energy Metro DESK, February 7, 2011. p.6. The article further states, "Chilton says his trip North to GFI changed his opinion about SEFs and OTC transparency in general. He says the hybrid broker model (voice and screens) for example, which actually is the rule and not the exception around the market, was news to him."

SEF Proposed Rulemakings

In the past year, the WMBAA has carefully considered and publicly responded to the many SEF rule proposals announced by the CFTC and SEC. For your reference, I have included a recent comment letter as an appendix to this testimony that lays out our primary concerns and makes simple, straightforward recommendations for changes to the proposed rulemakings.

The WMBAA appreciates the thoughtful approach of both Commissions and their staffs in implementing Dodd-Frank. It is clear that the two staffs have worked hard to generally try to balance the compelling interests of fostering growth in competitive OTC markets while ensuring that regulatory oversight will be in place to monitor for risks to these vital markets.

The WMBAA generally supports the SEC's interpretation of the SEF definition as it applies to trade execution through "any means of interstate commerce," including the full range of request-for-quote ("RFQ") systems, order books, auction platforms or voice brokerage trading that are used in the market today. [3] Such an approach is consistent with the letter and spirit of the Dodd-Frank Act and ensures flexibility in the permitted modes of execution.

On the other hand, the WMBAA is concerned with the CFTC's proposed SEF rules that work to restrict trading methods that are not exclusively central limit order book or RFQ for non-block, cleared swaps. We believe this approach is inconsistent with the requirement in the statute that SEFs may utilize "any means of interstate commerce." The CFTC's proposed rule is a one size fits all approach that limits market efficiency and customer choice.

Henry Ford famously told Model T buyers that they could have any color they wanted as long as it was black. Here, the CFTC is interpreting the Dodd Act to say that, for many trades SEFs can use any means of interstate commerce, as long as it is limited to RFQ or central limit order book systems.

The commercial flaw with the CFTC's approach is that it is largely the liquidity characteristics of a given swap product, not whether or not the instrument is cleared or part of a block transaction, that determines which blend of hybrid brokerage is most suited for trade execution. We know from decades of experience that, if a swap trades in high volume with great liquidity, then central limit order book systems may work fine. If, however, the particular swap instrument trades in lower volume with limited liquidity, then electronic order book systems will not succeed and other "hybrid" methods are more suitable. For these reasons, it is the position of the WMBAA that hybrid brokerage should be clearly recognized as an acceptable mode of trade execution for all swaps whether "Required" or "Permitted" under the CFTC's proposal.

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[3] Wholesale brokers provide highly sophisticated trade execution services, combining teams of traditional "voice" brokers with sophisticated electronic trading technology. As in virtually every sector of the financial services industry in existence over the past 50 years, wholesale brokers and their dealer clients began connecting with their customers by telephone. As technologies advanced and markets grew larger, more diverse and global, these systems have advanced to meet the changing needs of the market. Today, these systems include fully electronic central limit order books, RFQ systems, automated "work up," auction and matching sessions and pricing screens. The particular blend of human interaction and trading technology utilized is based on the unique liquidity characteristics and market dynamics of individual swaps products for the purpose of best enhancing trading liquidity. We refer to this integration of voice brokers with the range of electronic brokerage systems as "hybrid brokerage".

We believe this rule proposal is not supported by a plain reading or the legislative history of the Dodd Frank Act. Worse, it will constrain the very "hybrid" systems that are currently relied upon for liquidity formation in US swaps markets. In swaps markets without retail customer participation, the WMBAA questions what useful protections are afforded to swap dealers and major swap participants by regulations that would limit the methods by which they may execute their swaps transactions.

These regulatory proposals need to be carefully considered not only in their own right, but more so for their snowball effect that could impact US economic growth, competitiveness and, most critically, much needed American job creation. Getting those rules wrong will impact not just banks and investment managers, but thousands of American businesses that use swaps to hedge risk and better manage their capital for growth and reinvestment into the economy.

SEF Clarification Act

Mr. Chairman, introduction, consideration, and passage of the SEF Clarification Act will provide regulators with a clear expression of Congress' legislative intent and ensure that the final rules remain within the framework of competitive OTC markets. The WMBAA commends this Committee for considering this very important bipartisan proposal. This hearing is sending a loud and clear message to the CFTC that its proposed SEF rule is inconsistent with the intent of the authors of Section 733 of the Dodd-Frank Act.

The WMBAA appreciates the bipartisan efforts of Congressmen Scott Garrett, Robert Hurt, Gregory Meeks and Congresswoman Carolyn Maloney to try and make sure that the interpretations of the Dodd-Frank Act rules governing swap execution facilities foster competitive sources of liquidity for market participants. We agree with their concern to promote the transparent evolution of swaps trading on SEFs to ensure that a vibrant swap market continues to develop in the U.S.

The WMBAA continues to work with the CFTC and SEC to help create a regulatory framework that promotes a competitive marketplace for SEFs. The WMBAA remains concerned, as it has expressed in its comment letters to the SEC and the CFTC, that limitations on permitted modes of trade execution or requirements to display or delay quotes will cause significant disruptions to OTC swaps markets with the potential to drive trading offshore. We question what substantive analysis has been done on the economic effects of the CFTC proposed rule, which could run up transaction costs in the US swaps markets.

Similarly, the WMBAA does not believe that there is any justification or legislative authority for the RFQ requirement of five possible respondents. Rather, consistent with the Dodd-Frank Act's SEF definition, the threshold analysis should consider whether the system meets the "multiple to multiple" requirement set forth in the SEF definition. The WMBAA finds it inconsistent that the CFTC's proposed rules permit a SEF to operate a "multiple to one" RFQ system, while at the same time (without clear explanation), impose arbitrary limits on the various multiple-to-multiple hybrid execution platforms utilized by wholesale brokers. By contrast, the SEC's proposed rule merely requires that a RFQ system has the "ability" to send the request to many

participants, but not an obligation. We believe that the SEC's approach is more consistent with the statutory language of the Dodd-Frank Act.

Just as regulators were intimately involved in the debate surrounding the legislation that resulted in the Dodd-Frank Act, we encourage Congress to remain vigilant in its oversight of the regulatory rulemaking process. We applaud legislators for providing additional guidance to a regulatory agency misinterpreting statutory language and Congressional intent.

WMBAA Suggested Revisions to the CFTC SEF Rulemaking

In our most recent comment letter to the CFTC, the WMBAA identified the following as highest priority issues for attention:

- **"Permitted"/"Required" Transaction Classification System.** The WMBAA does not believe that distinguishing between "Permitted" and "Required" swaps is beneficial to the continued operation of competitive, liquid OTC markets. Such artificial designations of swap transactions may result in perverse consequences to OTC swaps markets. Further, the proposed restriction for "Required Transactions" to only those traded on order books or RFQ systems is contrary to the Commodity Exchange Act ("CEA's") permitted transaction of swaps "by ***any*** means of interstate commerce" (emphasis added). Under the current classifications, many hybrid brokerage methodologies may be prohibited or face an uncertain future, as each would require individual analysis by the Commission for compliance with the core principles. While certain requirements should be mandated during trade execution (*i.e.*, audit trail, trade processing, and reporting), limitations on methodologies used in trade execution should be considered in accordance with Congress' authorization of trade execution through "any means of interstate commerce" and weighed against any potential implications on liquidity formation and American market competitiveness.

- **The "15 Second Rule."** The WMBAA believes that the CFTC's proposed 15 second timing delay before a trader can execute against a customer's order or a SEF can execute two customers against each other is not contemplated by CEA, as amended by the Dodd-Frank Act, nor is it supported by legislative history. This concept, which seems to have originated in the futures exchange markets, will create uncertainty and risk in the swaps markets. This requirement does not appear to be consistent with the protection of investors. Even asset management firms, acting on behalf of state and local government pension funds, endowments, ERISA funds, 401(k) and similar types of retirement funds, all of whom have a statutory fiduciary duty to their clients, are opposed to this requirement.[4] The WMBAA recognizes that this approach may work in the highly liquid futures market. However, the 15 second delay ignores the episodic nature of liquidity in the swaps markets and will have a detrimental impact on transactional efficiency, cost and market liquidity. The WMBAA questions what substantive analysis has been done on the economic effects of 15 Second Rule, which could run up transaction costs in the US swaps markets frustrating American companies' ability to hedge commercial risk, particularly end users.

[4] *See, e.g.,* letter from Timothy W. Cameron, Esq., Managing Director, Asset Management Group, Securities Industry and Financial Markets Association, to CFTC, dated March 8, 2011.

- **SEF Impartial Access.** The WMBAA has requested that the CFTC delete the provision in the Proposed Rules providing impartial access to SEFs for independent software vendors ("ISVs"). The WMBAA believes this requirement is beyond the legal authority granted in the CEA and expands the impartial access statute beyond "market participants" to include entities lacking any intent to transact in swaps. There is no congressional intent or legislative history to indicate that the term "market participants" should be read beyond the commonly understood definition as used by the industry today.

- **Margin Assumptions.** In the CFTC's proposed rule for risk management requirements for derivatives clearing organizations ("DCOs"), DCOs must establish initial margin requirements that, in part, take into account the amount of time needed to liquidate a defaulting clearing member's position. To that end, the DCO must use a five business day liquidation horizon for cleared swaps not executed on a designated contract market ("DCM"), but a one business day liquidation horizon for all other products that it clears. The result of this proposed arrangement would be that DCOs would impose higher margin requirements for swaps executed on SEFs than swaps executed on DCMs. This result would be inconsistent with the competitive trade execution landscape envisioned by the Dodd-Frank Act. Such a regulatory scheme may also violate specific provisions of the Dodd-Frank Act which require a DCO to adopt rules providing that all swaps with the same terms and conditions submitted to the DCO for clearing are economically equivalent within the DCO and may be offset with each other within the DCO.

Harmonization

While the substance of the proposed requirements for SEF registration and core principles are extremely important, it is equally, if not more, important that the final regulatory frameworks are harmonized between the two agencies. A failure to achieve harmonization will lead to regulatory arbitrage and unreasonably burden market participants with redundant compliance requirements. As the recent SEC-CFTC joint proposed rule recognized, "a Title VII instrument in which the underlying reference of the instrument is a "narrow-based security index" is considered a security based swap subject to regulation by the SEC, whereas a Title VII instrument in which the underlying reference of the instrument is a security index that is not a narrow-based security index (i.e., the index is broad-based) is considered a swap subject to regulation by the CFTC." Any discrepancy in the Commissions' regulatory regimes will give market participants incentive to leverage the slight distinctions between these products to benefit from more lenient rules.

Similarly, in a world of competing regulatory regimes, business naturally flows to the market place that has the best regulations – not necessarily the most lenient, but certainly the ones that balance execution flexibility with participant protections. For example, GFI businesses are operating and subject to oversight in the UK by the FSA and globally by regulatory agencies in France, Singapore, Hong Kong, Japan and Korea. European and Asian markets are not imposing restrictions on methods of execution. US regulations need to be in harmony with those of foreign jurisdictions to avoid driving trading liquidity away from US markets to those offering greater flexibility in modes of trade execution.

“Rule of Construction” – Pre-Trade Price Transparency

Section 5h of the CEA, as amended by Section 733 of the Dodd-Frank Act, includes a “rule of construction” indicating that “the goal of this section is to promote the trading of swaps on swap execution facilities and to promote pre-trade price transparency in the swaps market.”

This rule of construction, which was added during the House-Senate Conference Committee, is an aspirational and undefined goal. It must be considered subordinate to the required statutory provisions of the Dodd-Frank Act. According to a Congressional Research Services report, longstanding principles of statutory interpretation indicate that particular substantive requirements, such as the mandate that regulators consider the impact of certain actions on market liquidity, override general canons of statutory construction. There are no operative provisions for pre-trade price transparency in the Dodd-Frank Act that correspond to the non-binding rule of construction. However, there exist other substantive provisions which were designed to increase transparency in OTC swaps markets.

For example, Section 2a(13)(E) of the CEA requires that, for rules providing for the public availability of transaction and pricing data for swaps, the CFTC shall contain provisions “that take into account whether the public disclosure will materially reduce market liquidity.” The same provision requires that the CFTC consider an “appropriate time delay for reporting large notional swap transactions (for block trades) to the public.” These post-trade reporting requirements are indicative of Congressional recognition that OTC swaps markets thrive when the need for transparency is balanced against the impact on market liquidity. Congress clearly sought to preserve market liquidity and protect businesses’ ability to hedge commercial risk and to appropriately plan for the future, promoting economic growth and job creation.

Further, the SEF core principles in Section 5h(f) of the CEA require a SEF to make public timely information on price, trading volume, and other trading data on swaps and electronically capture and transmit trade information with respect to transactions executed on the facility. These statutory requirements precede any legislative “goals” that may be imposed by regulatory rulemakings. The SEF core principles ensure that market information is promptly and accurately reported to both regulators and to market participants without materially impeding liquidity formation. To impose requirements in any other manner would disrupt the competitive trade execution market place, where trading systems or platforms vie with each other to win their customers’ business through better price, provision of superior market information and analysis, deeper liquidity and better service.

It is important to recognize that the “goal” of pre-trade price transparency is not inconsistent with the traditional operations of wholesale brokers. Because revenue is generated from commissions paid on executed trades, wholesale brokers seek to complete more transactions with more customers. It is in each wholesale brokers economic interest to naturally and consistently disseminate pre-trade price information – bids and offers – to the widest practical range of customers with the express purpose of price discovery and the matching of buyers and sellers. The trading systems and platforms employ a number of means of pre-trade transparency, including software pricing analytics, electronic and voice price dissemination, and electronic price work up technology.

Wholesale brokers generally maintain extensive trade reporting systems supported by sophisticated technology that can provide regulators with real-time trading information, increasing transparency and providing critical information on financial conditions and market dynamics. Wholesale brokers also increase transparency in OTC markets by publishing market and pricing data and facilitating enhanced audit trails to monitor against market fraud and manipulation.

Different Characteristics of Futures and OTC Markets

While the relationship between exchange-traded and OTC markets generally has been complementary, each market provides unique services to different trading constituencies for products with distinctive characteristics and liquidity needs. As a result, the nature of trading liquidity in the exchange-traded and OTC markets is often materially different. It is critically important that regulators recognize the difference.

Highly liquid markets exist for both commoditized, exchange-traded products, and the more standardized OTC instruments, such as U.S. treasury securities, equities and certain commodity derivatives. Exchange-traded markets provide a trading venue for the most commoditized instruments that are based on standard characteristics and single key measures or parameters. Exchange-traded markets with central counterparty clearing rely on relatively active order submission by buyers and sellers and generally high transaction flow. Exchange-traded markets, however, offer no guarantee of trading liquidity as evidenced by the high percentage of new exchange-listed products that regularly fail to enjoy active trading. Nevertheless, for those products that do become liquid, exchange marketplaces allow a broad range of trading customers (including retail customers) meeting relatively modest margin requirements to transact highly standardized contracts in relatively small amounts. As a result of the high number of market participants, the relatively small number of standardized instruments traded, and the credit of a central counterparty clearer, liquidity in exchange-traded markets is relatively continuous in character.

In comparison, many swaps markets and other less commoditized cash markets feature a broader array of less-standardized products and larger-sized orders that are traded by fewer counterparties, almost all of which are institutional and not retail. Trading in these markets is characterized by variable or non-continuous liquidity. To offer one simple example, of the over 4,500 corporate reference entities in the credit default swaps market, 80% trade less than 5 contracts per day.[5] Such thin liquidity can often be episodic, with liquidity peaks and troughs that can be seasonal (certain energy products) or more volatile and tied to external market and economic conditions (e.g. many credit, energy and interest rate products).

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[5] ISDA & SIFMA, "Block Trade Reporting for Over-the-Counter Derivatives Markets," January 18, 2011, ("ISDA/SIFMA Block Trade Study"). *Available at* http://www.isda.org/speeches/pdf/Block-Trade-Reporting.pdf.

General Comparison of OTC Swaps Markets to Listed Futures Markets[6]

Characteristic	**OTC Swaps**	**Listed Futures**
Trading Counterparties	10s – 100s (no retail)	100,000s (incl. retail)
Daily Trading Volume	1,000s	100,000s
Tradable Instruments	100,000s[7]	1,000s
Trade Size	Very large	Small

Drawing a simple comparison, the futures and equities exchange markets generally handle on any given day hundreds of thousands of transactions by tens of thousands of participants (many retail), trading hundreds of instruments in small sizes. In complete contrast, the swaps markets provide the opportunity to trade tens of thousands of instruments that are almost infinitely variable. Yet, on any given day, just dozens of large institutional counterparties trade only a few thousand transactions in very large notional amounts.

The effect of these very different trading characteristics results in fairly continuous liquidity in futures and equities compared with limited or episodic liquidity in swaps. There is richness in those differences, because taken together, this market structure has created appropriate venues for trade execution for a wide variety of financial products and a wide variety of market participants. But the difference is fundamental and a thorough understanding of it must be at the heart of any effective rule making under Title VII of the Dodd-Frank Act. The distinct nature of swaps liquidity has been the subject of several studies and comment letters presented to the CFTC and the SEC.[8]

The unique nature of swaps markets liquidity was recently analyzed by the New York Federal Reserve.[9] Their study found that the most active of single-name CDS contracts traded a little over 20 times per day, and the majority of single name CDS contracts trade less than once a day, but in very large sizes. This is wholly different than the hundreds of thousands of trades that take place each day in many exchange traded instruments.

It is because of the limited liquidity in many of the swaps markets that they have evolved into "dealer" marketplaces for institutional market participants. That is, corporate end users of swaps and other "buy side" traders recognize the risk that, at any given time, a particular swaps marketplace will not have sufficient liquidity to satisfy their need to acquire or dispose of swaps positions. As a result, these counterparties may chose to turn to well capitalized sell-side dealers that are willing to take on the "liquidity risk" for a fee. These dealers have access to secondary trading of their swaps exposure through the marketplaces operated by wholesale and inter-dealer brokers such as GFI Group. These wholesale marketplaces allow dealers to hedge the market risk of their swaps inventory by trading with other primary dealers and large, sophisticated market

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[6] *See* ISDA/SIFMA Block Trade Study.

[7] Inclusive of all tenors, strikes and duration.

[8] ISDA/SIFMA Block Trade Study; Comment Letter of JPMorgan (January 12, 2011).

[9] Kathryn Chen, Michael Fleming, John Jackson, Ada Li, and Asani Sarkar, An Analysis of CDS Transactions: Implications for Public Reporting (September 2011), *available at* http://www.newyorkfed.org/research/staff_reports/sr517.pdf.

participants. Without access to wholesale markets, the risk inherent in holding swaps inventory would cause dealers to have to charge much higher prices to their buy side customers for taking on their liquidity risk, assuming they remain willing to do so.

American Capital Markets Risk Being Driven Offshore – Again

In closing, it is clear that the US over-the-counter swaps markets are on the cusp of seismic changes that could have unintended, yet far reaching, consequences if not enacted with prudence and common sense.

We are reminded of the sensitivity of the regulatory process by the effects of a whole other set of US financial market regulations that were put in place several decades ago. Those regulations remind us of the eternal law of unintended consequences.

Many professionals in the swaps brokerage industry began work in the late 1970s and 1980s in London. In those days, London was the central marketplace for bank deposits of billions of US Dollars held outside the US - the so-called Euro-dollar market. The most critical stimulus for the development of the Euro-dollar market was Regulation Q promulgated under the Glass-Steagall Act. Under Reg Q, the Federal Reserve fixed maximum interest rates that US member banks could pay on US Dollar deposits. Because of these ceilings, Dollar deposits in non-US banks, paying a higher interest rate, became more attractive than deposits in US banks. As a result, the overseas Euro-dollar market grew rapidly. Combined with various US foreign exchange controls, Reg Q led to the development of a major non-US marketplace for deposits of US currency. That non-US marketplace stimulated all manner of economic development and job creation – NOT jobs here in the United States, but overseas in London and elsewhere.

It is useful to keep in mind this ill-fated financial regulation in the course of today's hearing of proposed US regulations of SEFs. We must look carefully at these regulations not only in their own right, but also for their impact on US economic growth, market vibrancy and, most critically, job creation. It is well worth our time to ask ourselves:

- Which regulations being proposed today will constrict liquidity tomorrow in US swaps markets?

- Will the "15 second rule" be the new Reg. Q shifting US markets offshore?

- Will regulatory bias toward electronic trading for clearable, non-block swaps drive markets to places that allow trading to be done through the greater flexibility of hybrid execution?

- Will certain rule proposals lead to the loss of jobs for US hybrid brokerage employees and their replacement with workers abroad?

In posing these questions, we should be aware that the answers are not only important to us in America, but are also being weighed by the Lord Mayors of London and Geneva, the exchange operators of Singapore and the financial industrialists of Hong Kong and Beijing. Their gain is our loss. As American businesses and employers, we must get it right for the sake of the American economy and jobs.

APPENDIX

WMBAA Letter to the SEC & CFTC
June 3, 2011

June 3, 2011

The Honorable Gary Gensler
Chairman
U.S. Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

The Honorable Mary Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-2001

Re: Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act; Core Principles and Other Requirements for Swap Execution Facilities (RIN 3038-AD18); Real-Time Public Reporting of Swap Transaction Data (RIN 3038–AD08); Reporting and Dissemination of Security-Based Swap Information (File 3235–AK80); Registration and Regulation of Security-Based Swap Execution Facilities (RIN 3235-AK93)

Dear Chairman Gensler and Chairman Schapiro:

As a follow-up to the participation of Wholesale Markets Brokers' Association Americas ("WMBAA")[1] members in the joint staff roundtable hosted by the Commodity Futures Trading Commission ("CFTC" or "Commission") and the Securities and Exchange Commission ("SEC" or "Commission") on May 3 and May 4, 2011 dedicated to discussing the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), the WMBAA appreciates the opportunity to provide additional comments related to the importance of proper harmonization of and implementation by the two agencies as the rulemaking process advances.

The WMBAA believes that it is vital to the stability and liquidity provided by OTC swaps and security-based swaps (collectively referred to as "swaps") markets to ensure that swap and security-based swap execution facilities (collectively referred to as "SEFs") are brought under the new regulatory regime in such a way that fosters the competitive nature of OTC markets and continues to provide a deep source of liquidity for market participants.

In addition to the formal comments previously submitted with respect to the CFTC and SEC's proposed rules,[2] the WMBAA offers additional comments on the appropriate implementation of the

[1] The Wholesale Markets Brokers' Association Americas is an independent industry body representing the largest inter-dealer brokers ("IDBs") operating in the North American wholesale markets across a broad range of financial products. The WMBAA and its member firms have developed a set of *Principles for Enhancing the Safety and Soundness of the Wholesale, Over-The-Counter Markets*. Using these principles as a guide, the Association seeks to work with Congress, regulators and key public policymakers on future regulation and oversight of over-the-counter ("OTC") markets and their participants. By working with regulators to make OTC markets more efficient, robust and transparent, the WMBAA sees a major opportunity to assist in the monitoring and consequent reduction of systemic risk in the country's capital markets. For more information, please see www.wmbaa.org.

[2] *See*, *e.g.*, letter from J. Christopher Giancarlo, Chairman, WMBAA, to SEC and CFTC, dated July 29, 2010; *see also* letter from Julian Harding, Chairman, WMBAA, to SEC and CFTC, dated November 19, 2010; letter from Julian Harding, Chairman, WMBAA, to SEC and CFTC, dated November 30, 2010; letter from Julian Harding, Chairman, WMBAA, to SEC, dated January 18, 2011; letter from Stephen Merkel, Chairman, WMBAA, to CFTC, dated February 7, 2011; letter from Stephen Merkel, Shawn Bernardo, Christopher Ferreri, J. Christopher Giancarlo and Julian Harding, WMBAA, to CFTC, dated April 4, 2011.

proposed rules and substantive requirements that would pose significant burdens unless harmonized between the CFTC and SEC.

The WMBAA also recognizes that certain provisions of the Commodity Exchange Act ("CEA") and the Securities Exchange Act of 1934 ("1934 Act"), as amended by the Dodd-Frank Act, impose specific requirements on market participants as of the effective date, July 16, 2011. In particular, we note the statutory provisions could be read to require on and after July 16, 2011 the "trading" of swaps only on registered designated contract markets ("DCMs"), national securities exchanges and SEFs.

Congress envisioned that the Title VII rulemaking process would move quickly and that all rules and regulations would be in place prior to the July 16, 2011 effective date. It is clear that final rules for the registration of SEFs will not be in place by the July 16, 2011 effective date. Further, the Commissions have not made any determinations about which swaps will be subject to the mandatory clearing requirement, which will dictate which swaps are required to be traded on a SEF.

The WMBAA is concerned that, absent regulatory relief by the Commissions, existing trade execution systems or platforms such as those provided by WMBAA members, and the swaps transactions entered into thereon will be subject to significant legal uncertainty due to the incomplete rulemaking process. Further, we believe IDBs should not be required to register as futures commission merchants ("FCMs"), introducing brokers ("IBs") or broker-dealers to "broker" swaps while the Commissions are in the process of finalizing the SEF registration and regulation rules.[3] The WMBAA strongly encourages the Commissions to issue as soon as possible a legal opinion, no action position or guidance which clarifies that swaps entered into after July 15, 2011 are not required to be traded on a registered DCM, national securities exchange and/or SEF or brokered by a registered FCM, IB or broker-dealer until the Commissions have issued final rules which are effective regarding the registration of SEFs and issued final rules which are effective with respect to the mandatory trading of swaps. The WMBAA looks forward to discussing the impact of the self-effectuating provisions in the CEA and 1934 Act with the Commissions.

Importance of Harmonization between Agencies and Foreign Regulators

While the substance of the proposed requirements for SEF registration and core principles are extremely important, it is equally, if not more, important that the final regulatory frameworks are harmonized between the two agencies. A failure to achieve harmonization will lead to regulatory arbitrage and unreasonably burden market participants with redundant compliance requirements. As the recent SEC-CFTC joint proposed rule recognized, "a Title VII instrument in which the

[3] The WMBAA notes that, among the extensive Dodd-Frank Act rulemakings, the CFTC has not comprehensively addressed the regulation of brokers engaged in swap-related activities. Section 721 of the Dodd-Frank Act amends the definitions of "futures commission merchants" and "introducing brokers" in the CEA to permit these intermediaries to trade swaps on behalf of customers. As of the effective date, these intermediaries may be required to register with the CFTC and become members of the National Futures Association. As such, these intermediaries would be subject to the National Futures Association's rules and examinations, for example Series 3 examination, which is based on futures-related activity. The WMBAA urges the CFTC to provide clarity on this issue by delaying the implementation of swap introducing broker and futures commission merchant registration and issuing interpretive guidance to assist swap intermediaries in understanding what activities might mandate registration and the requirements for Commission registration.

underlying reference of the instrument is a "narrow-based security index" is considered a security-based swap subject to regulation by the SEC, whereas a Title VII instrument in which the underlying reference of the instrument is a security index that is not a narrow-based security index (*i.e.*, the index is broad-based), the instrument is considered a swap subject to regulation by the CFTC."[4] Any discrepancy in the Commissions' regulatory regimes will give market participants incentive to leverage the slight distinctions between these products to benefit from more lenient rules.

The Dodd-Frank Act's framework was constructed to encourage the growth of a vibrant, competitive marketplace of regulated SEFs. Final rules should be crafted that encourage the transaction of OTC swaps on these trading systems or platforms, as increased SEF trading will increase liquidity, and transparency for market participants and increase the speed and accuracy of trade reporting to swap data repositories ("SDRs"). Certain provisions relate to these points, such as the permitted methods of trade execution, the scope of market entities granted impartial access to SEFs, the formulation of block trade thresholds and compliance with SEF core principles in a flexible manner that best recognizes the unique characteristics of competitive OTC swaps markets.

Based upon its review of both the SEC and the CFTC's Proposed Rules, the WMBAA suggests that the agencies consider the release of further revised proposed rules incorporating comments received for additional review and comment by market participants. This exercise would ensure that the SEC and CFTC have the opportunity to review each of their proposals and integrate appropriate provisions from the proposed rules and comments in order to arrive at more comprehensive regulations. Further, the WMBAA encourages the CFTC and SEC to work together to attempt to harmonize their regulatory regimes to greatest extent possible. While some of the rules will differ as a result of the particular products subject to each agency's jurisdiction, inconsistent rules will make the implementation for SEFs overly burdensome, both in terms of time and resources.

As an example, the WMBAA encourages the CFTC and the SEC to adopt one common application form for the registration process. While regulatory review of the application by the two agencies is appropriate, reducing the regulatory burden on applicant SEFs to one common form would allow for a smoother, timelier transition to the new regulatory regime. Because the two proposed registration forms are consistent in many respects, the WMBAA believes the differences between the two proposed applications could be easily reconciled to increase regulatory harmonization and increase efficiency.

Similarly, there needs to be a consistent approach with respect to block trades. Not only should the threshold calculations be derived from similar approaches, allowing for tailored thresholds that reflect the trading characteristics of particular products, but the methods of trade execution permitted by the Commissions should both be flexible and within the framework of the SEF definition.

U.S. regulations also need to be in harmony with regulations of foreign jurisdictions to avoid driving trading liquidity away from U.S. markets toward markets offering greater flexibility in modes of trade execution. In particular, European regulators have not formally proposed swap execution rules with proscriptive limits on trade execution methodology. We are not aware of any significant regulatory

[4] Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 76 Fed. Reg. at 29, 845 (May 23, 2011).

efforts in Europe to mandate electronic execution of cleared swaps by institutional market participants.

In a world of competing regulatory regimes, business naturally flows to the market place that has the best regulations – not necessarily the most lenient, but certainly the ones that have the optimal balance of liquidity, execution flexibility and participant protections. In an OTC swaps market that excludes retail participants, the WMBAA questions what useful protections are afforded to swap dealers and major swap participants by regulations that would limit the methods by which they may execute their orders. U.S. regulations need to be in harmony with regulations from foreign jurisdictions to avoid driving trading liquidity away from U.S. markets towards markets offering greater flexibility in modes of trade execution.

Implementation of Final Rules

Compliance Timeline

The WMBAA believes that the timeline for implementation of the final rules is as important, if not more important than, the substance of the regulations. The WMBAA members recognize and support the fundamental changes to the regulation of the OTC swaps markets resulting from the passage of the Dodd-Frank Act and will commit the necessary resources to diligently meet the new compliance obligations. However, the CFTC and SEC must recognize that these changes are significant and will result in considerable changes to the operations and complex infrastructure of existing trading systems and platforms.

It is necessary that any compliance period or registration deadline provides sufficient opportunity for existing trade execution systems or platforms to modify and test systems, policies and procedures to ensure that its operations are in compliance with final rules. It is very difficult to determine the amount of time needed to ensure compliance with the rules until the final requirements are made available. However, providing market participants with an insufficient time frame for compliance could harm the efficient functioning of the markets if existing entities can no longer operate until they have built the requisite platforms to comply with every measure in final rules.

The vast number of changes required to existing trading systems or platforms to register as a SEF will impose a substantial burden in the short term. Upon implementation of the Dodd-Frank Act and final rules, wholesale brokers that register as SEFs will be required to undertake activities that include, but are not limited to: (i) developing extensive rulebooks; (ii) meeting new substantive and reporting-related financial requirements; (iii) implementing sophisticated trading, surveillance, monitoring and recordkeeping processes and technology; (iv) creating extensive self-regulatory capabilities and entering into arrangements with their customers setting forth the terms of this new arrangement; (v) potentially restructuring the governance structure of their companies, including identifying and recruiting independent board members and establishing required governance committees; (vi) potentially altering the mix of their existing customer base and adding new customers; (vii) implementing appropriate contractual and technological arrangements with clearing houses and SDRs; (viii) hiring staff and creating a compliance program structured to meet the Commissions' specifications; and (ix) educating staff on the requirements relating to trade execution, clearable vs. non-clearable trades, blocks vs. non-blocks, bespoke and illiquid trades, end users vs. non-end users and margin requirements.

As this list indicates, these undertakings are monumental. This burden is compounded when considering that the users of intermediary services will themselves be going through dramatic change, responding to new clearing, margin and capital requirements, new business conduct standards and changes to the means by which they are able to interact with their end customers. The WMBAA would suggest the SEC and CFTC consider the implementation of other regulatory regimes with lesser burdens than the Dodd-Frank Act, such as the introductions of TRACE reporting for corporate bonds and Regulations SHO and NMS in the equity markets. The imposition of these new regimes was far less drastic of a change to the markets and required participants to expend far fewer resources. Yet, the imposition of these regimes, particularly Regulation NMS, was conducted over a staged period to allow market participants sufficient time to comply.

Appropriate "Phasing" of Final Rules

Based upon the plain language of the Dodd-Frank Act, the mandatory trade execution requirement will become effective at the time that swaps are deemed "clearable" by the appropriate Commission. Accepting the premise that the mandatory trade execution requirement cannot be enforced until there are identified "clearable" swaps and swaps are "made available for trading," the Commissions need to ensure that a functioning and competitive marketplace of registered SEFs exists at the time the first trade is cleared and made available for trading. As such, it is necessary that SEFs be registered with the CFTC or SEC, as applicable and available to execute transactions at the time that trades begin to be cleared under the new laws. The WMBAA estimates that its members currently account for over 90% of inter-dealer intermediated swaps transactions taking place around the world today. If the SEF registration process is not effectively finalized by the time various swaps are deemed clearable, there could be serious disruptions in the U.S. swaps markets with adverse consequences for broader financial markets.

Furthermore, requiring absolute compliance with final rules within a short time frame is particularly troublesome for likely future SEFs, as such a result may provide DCMs or national securities exchanges with an unfair advantage in attracting trading volume due to their ability to quickly meet the regulatory burdens. Congress distinguished between exchanges and SEFs, intending for competitive trade execution to be made available on both platforms. Congress also recognized the importance of SEFs as distinct from exchanges, noting that a goal of the Dodd-Frank Act is to promote the trading of swaps on SEFs. The phasing in of final rules for both exchanges and SEFs should be done concurrently to ensure that this competitive landscape remains in place under the new regulatory regime.

Not only will implementation of the final rules impact market infrastructure, but the timing in which these rules are implemented could significantly impact U.S. financial markets. As Commissioner Jill Sommers recently remarked before the House Agriculture General Farm Commodities and Risk Management Subcommittee, "a material difference in the timing of rule implementation is likely to occur, which may shift business overseas as the cost of doing business in the US increases and create other opportunities for regulatory arbitrage."[5] If the U.S. regulations are implemented before

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[5] Statement of Jill E. Sommers before the Subcommittee on General Farm Commodities and Risk Management, House Committee on Agriculture, May 25, 2011, available at http://agriculture.house.gov/pdf/hearings/Sommers110525.pdf.

foreign regulators have established their intended regulatory framework, it could put U.S. markets at a significant disadvantage and might result in depleted liquidity due to regulatory arbitrage opportunities.

As the rulemaking process moves forward, the WMBAA suggests the following progression of rules be completed:

- First, finalize product definitions. Providing the market with certainty related to the scope of what constitutes a "swap" and "security-based swap" will allow market participants to accurately gauge the impact of the other proposed rules and provide constructive feedback on those rules.
- Second, implement final rules related to real-time reporting for regulatory oversight purposes. The submission of information to SDRs is an activity that takes place in many OTC markets today and will not unduly burden those who must comply with the requirement. Ensuring that the Commissions receive current, accurate market data is a cost-effective method to mitigate systemic risk in the short-term.
- Next, establish block trade thresholds and finalize public reporting rules. The information gathered by SDRs since the implementation of the mandatory trade reporting requirement, along with historical data made available by trade repositories and trade execution facilities, can be used to determine the appropriate threshold levels on a product-by-product basis. At the same time, public reporting rules can be put into place, including an appropriate time delay (that is consistent with European and the other major global market rules) for block trades.
- After the reporting mechanics have been established, the clearing mandate can be implemented. During this step, the Commissions can determine what swaps are "clearable" and subject to the clearing mandate, and clearinghouses can register and begin to operate within the new framework.
- Finally, once swaps are deemed clearable, the mandatory trade execution requirement can be put into place for SEFs and DCMs for those products made available for trading. The WMBAA believes that all clearable swaps will be made available for trading by SEFs, as these trade execution platforms compete to create markets and match counterparties. With the trade execution requirement's implementation, it is imperative that rules for SEFs and DCMs are effective at the same time, as implementing either entity's rules prior to the other will result in an unfair advantage for capturing market share of executable trades simply because they could more quickly meet the regulatory burdens.

Flexible Approach to SEF Registration, Permitted Modes of Trade Execution, Impartial Access

The WMBAA members have long acted as intermediaries in connection with the execution of swaps in the OTC market. While a regulated OTC market is new to the swap markets, the WMBAA members are already subject to oversight by financial regulators across the globe, including the SEC and the CFTC, for services offered in a range of other products and markets. The WMBAA members have acted as OTC swap execution platforms for decades and, as a result, understand what is necessary to support and promote a regulated, competitive and liquid swaps market. Although a SEF might be a new concept originating in the Dodd-Frank Act, the effective role of existing intermediaries in the OTC swaps marketplace is not.

The WMBAA supports a flexible approach to evaluating applicant SEFs. As Congress recognized and mandated by law, to promote a competitive and liquid swaps market, trade execution "through any means of interstate commerce" establishes a broad framework that permits multiple modes of swap execution, so long as the proposed mode of execution is capable of satisfying the statutory requirements.

The WMBAA believes that any interpretation of the SEF definition must be broad, and any trading system or platform that meets the statutory requirements should be recognized and registered as a SEF. The WMBAA supports a regulatory framework that allows any SEF applicant that meets the statutory requirements set forth in the Dodd-Frank Act to be permitted to operate under each Commission's rules in accordance with the Dodd-Frank Act.

The WMBAA strongly supports the SEC's interpretation of the SEF definition as it applies to trade execution through any means of interstate commerce, including request for quote systems, order books, auction platforms or voice brokerage trading, because such an approach is consistent with the letter and spirit of the Dodd-Frank Act and ensures flexibility in the permitted modes of execution. The WMBAA believes that this approach should be applied consistently to all trading systems or platforms and will encourage the growth of a competitive marketplace of trade execution facilities.

Further, the WMBAA is concerned with the CFTC's interpretation of the SEF definition, as it limits the permitted modes of trade execution, specifically restricting the use of voice-based systems to block trades. The SEF definition and corresponding requirements on the CEA, as amended by the Dodd-Frank Act, do not provide any grounds for this approach and will severely impair other markets that rely on voice-based systems (or hybrid systems, which contain a voice component) to create liquidity.

Permitted Use of Voice and Hybrid Trade Execution Platforms

The CFTC's proposed mandate precludes the use of voice-based systems for "Required Transactions" without any explanation of why the permitted modes of execution should be more restrictive than the statute dictates. The WMBAA is concerned that such a rigid implementation of the SEF framework will devastate existing voice and "hybrid" systems (described below) that are currently relied upon for liquidity formation in global swaps markets. "Hybrid brokerage," which integrates voice with electronic brokerage systems, should be clearly recognized as an acceptable mode of trade execution, for all swaps trade execution. The combination of traditional "voice" brokers with sophisticated electronic trading and matching systems is necessary to provide liquidity in markets for less commoditized products where liquidity is not continuous. Failure to unambiguously include such systems is not only inconsistent with the Dodd-Frank Act but will severely limit liquidity production for a wide array of transactions. The WMBAA remains concerned that such a restrictive SEF regime will lead to market disruption and, worse, liquidity constriction with adverse consequences for vital U.S. capital markets.

What determines which blend of hybrid brokerage is adopted by the markets for any given swap product is largely the market liquidity characteristic of that product, whether or not the instrument is cleared. For example, a contract to trade Henry Hub Natural Gas delivered in Summer 2017, though cleared, will generally be insufficiently liquid to trade on a central limit order book. This is

true the farther out the delivery date for many cleared products, where market makers are unwilling to post executable bids and offers in instruments that trade infrequently. In markets where price spreads are wide or trading is infrequent, central limit order books are not conducive to liquidity, but rather may be disruptive to it.

Critically, what determines which blend of hybrid brokerage is adopted by the markets for any given swap product also has little to do with whether the size of a transaction is sufficient or not to be a block trade. Block trades concern the size of an order, as opposed to the degree of market liquidity or presence of tight bid-offer spreads. Depending on where block trade thresholds are set, block trades can take place in markets from very illiquid to highly liquid. Yet, central limit order book trade execution generally only works well in markets with deep liquidity, and such liquidity is not always available even within a usually liquid market. For less liquid markets, even non-block size trades depend on a range of trading methodologies distinct from central limit order book or request for quote. For these reasons, hybrid brokerage should be clearly recognized as an acceptable mode of trade execution for all swaps whether "Required" or "Permitted."

In addition, the regulatory framework for the swaps market must take into consideration the significant differences between the trading of futures on an existing exchange and the trading of swaps on SEF platforms. While it may be appropriate, in certain instances, to look to the futures model as instructive, overreliance on that model will not achieve Congress' goal. Congress explicitly incorporated a SEF alternative to the exchange-trading model, understanding that competitive execution platforms provide a valuable market function. Final rules governing SEFs should reflect Congressional intent and promote the growth of existing competitive, vibrant markets without impeding liquidity formation.

Impartial Access to SEFs

The WMBAA is concerned that the CFTC's proposed mandate that SEFs provide impartial access to independent software vendors ("ISVs") is beyond the legal authority in the CEA because it expands the impartial access provision beyond "market participants" to whom access is granted under the statute. Moreover, because SEFs are competitive execution platforms, a requirement to provide impartial access to market information to ISVs who lack the intent to enter into swaps on a trading system or platform will reduce the ability for market participants to benefit from the competitive landscape that provides counterparties with the best possible pricing. Further, given the lack of a definition of what constitutes an ISV and the significant technological investments made by wholesale brokers to provide premiere customer service, the ISV impartial access requirement leaves open the possibility that SEFs could qualify as ISVs in order to seek access to competitors' trading systems or platforms. This possibility would defeat the existing structure of competitive sources of liquidity, to the detriment of market participants, including commercial end users. The WMBAA strongly urges the CFTC to carefully consider the SEC's impartial access proposal, which is well aligned with both the express statutory provisions and the broader goals of Title VII of the Dodd-Frank Act to promote a marketplace of competing swaps execution venues.

The WMBAA also believes the SEC should review its proposed impartial access provisions to ensure that impartial access to the SEF is different for competitor SEFs or national exchanges than for registered security-based swap dealers, major security-based swap participants, brokers or eligible contract participants. Congress clearly intended for the trade execution landscape after the

implementation of the Dodd-Frank Act to include multiple competing trade execution venues, and ensuring that competitors cannot access a SEF's trading system or platform furthers competition, to the benefit of the market and all market participants.

Interim or Temporary SEF Registration

The implementation of any interim or temporary registration relief must be in place for registered trading systems or platforms at the time that swaps are deemed "clearable" by the Commissions to allow such platforms to execute transactions at the time that trades begin to be cleared. Interim or temporary registration relief would be necessary for trading systems or platforms if sequencing of rules first addresses reporting to SDRs and mandatory clearing prior to the mandatory trade execution requirement. The WMBAA strongly encourages the Commission to provide prompt provisional registration to existing trade execution intermediaries that intend to register as a SEF and express intent to meet the regulatory requirements within a predetermined time period. To require clearing of swaps through derivatives clearing organizations without the existence of the corresponding competitive trade execution venues risks consistent implementation of the Dodd-Frank Act and could have a disruptive impact on market activity and liquidity formation, to the detriment of market participants.

At the same time, a temporary registration regime should ensure that trade execution on SEFs and exchanges is in place without benefitting one execution platform over another. Temporary registration for existing trade execution platforms should be fashioned into final rules in order to avoid disrupting market activity and provide a framework for compliance with the new rules. The failure of the Commission to provide interim or temporary relief for existing trading systems or platforms may alter the swaps markets and unfairly induce market participants to trade outside the U.S. or on already-registered and operating exchanges.

The 15 Second Rule

Finally, there does not appear to be any authority for the CFTC's proposed requirement that, for "Required Transactions," SEFs must require that traders with the ability to execute against a customer's order or execute two customers against each other be subject to a 15 second timing delay between the entry of those two orders ("15 Second Rule"). One adverse impact of the proposed 15 Second Rule is that the dealer will not know until the expiration of 15 seconds whether it will have completed both sides of the trade or whether another market participant will have taken one side. Therefore, at the time of receiving the customer order, the dealer has no way of knowing whether it will ultimately serve as its customer's principal counterparty or merely as its executing agent. The result will be greater uncertainly for the dealer in the use of its capital and, possibly, the reduction of dealer activities leading, in turn, to diminished liquidity in and competitiveness of U.S. markets with costly implications for buy-side customers and end users.

While this delay is intended by the Commission to ensure sufficient pre-trade transparency, under the CEA, transparency must be balanced against the liquidity needs of the market. Once a trade is completed when there is agreement between the parties on price and terms, any delay exposing the parties to that trade to further market risk will have to be reflected in the pricing of the transaction, to the detriment of all market participants.

Ensuring that Block Trade Thresholds are Appropriately Established

As noted in previous remarks submitted to each Commission, from the perspective of intermediaries who broker transactions of significant size between financial institutions it is critical that the block trade threshold levels and the reporting regimes related to those transactions are established in a manner that does not impede liquidity formation. A failure to effectively implement block trading thresholds will frustrate companies' ability to hedge commercial risk. Participants rely on swaps to appropriately plan for the future, and any significant changes to market structure might ultimately inhibit economic growth and competitiveness.

Establishing the appropriate block trade thresholds is of particular concern for expectant SEFs because the CFTC's proposal regarding permitted modes of execution restricts the use of voice-based systems solely to block trades. While WMBAA believes that this approach is contrary to the SEF definition (as discussed herein and in previous letters), which permits trade execution through any means of interstate commerce, this approach, if combined with block trade thresholds that are too high for the particular instrument, would have a negative impact on liquidity formation.

With respect to block trade thresholds, the liquidity of a market for a particular financial product or instrument depends on several factors, including the parameters of the particular instrument, including tenor and duration, the number of market participants and facilitators of liquidity, the degree of standardization of instrument terms and the volume of trading activity. Compared to commoditized, exchange-traded products and the more standardized OTC instruments, many swaps markets feature a broader array of less-commoditized products and larger-sized orders that are traded by fewer counterparties, almost all of which are institutional and not retail. Trading in these markets is characterized by variable or non-continuous liquidity. Such liquidity can be episodic, with liquidity peaks and troughs that can be seasonal (*e.g.*, certain energy products) or more volatile and tied to external market and economic conditions (*e.g.,* many credit, energy and interest rate products).

As a result of the episodic nature of liquidity in certain swaps markets combined with the presence of fewer participants, the WMBAA believes that the CFTC and SEC need to carefully structure a clearing, trade execution and reporting regime for block trades that is not a "one size fits all" approach, but rather takes into account the unique challenges of fostering liquidity in the broad range of swaps markets.

Such a regime would provide an approach that permits the execution of transactions of significant size in a manner that retains incentives for market participants to provide liquidity and capital without creating opportunities for front-running and market distortion.

To that end, the WMBAA supports the creation of a Swaps Standards Advisory Committee ("Advisory Committee") for each Commission, comprised of recognized industry experts and representatives of registered SDRs and SEFs to make recommendations to the Commissions for appropriate block trade thresholds for swaps. The Advisory Committee would (i) provide the Commissions with meaningful statistics and metrics from a broad range of contract markets, SDRs and SEFs to be considered in any ongoing rulemakings in this area and (ii) work with the Commissions to establish and maintain written policies and procedures for calculating and

publicizing block trade thresholds for all swaps reported to the registered SDR in accordance with the criteria and formula for determining block size specified by the Commissions.

The Advisory Committee would also undertake market studies and research at its expense as is necessary to establish such standards. This arrangement would permit SEFs, as the entities most closely related to block trade execution, to provide essential input into the Commissions' block trade determinations and work with registered SDRs to distribute the resulting threshold levels to SEFs. Further, the proposed regulatory structure would reduce the burden on SDRs, remove the possibility of miscommunication between SDRs and SEFs and ensure that SEFs do not rely upon dated or incorrect block trade thresholds in their trade execution activities. In fact, WMBAA members possess historical data for their segment of the OTC swap market which could be analyzed immediately, even before final rules are implemented, to determine appropriate introductory block trade thresholds, which could be revised after an interim period, as appropriate.

Conclusion

The WMBAA thanks the Commissions for the opportunity to comment on these very important issues. We look forward to continuing our conversations with the Commissioners and staff as the new regulatory framework is developed and implemented in a way that fosters competition and liquidity for market participants.

Please feel free to contact the undersigned with any questions you may have on our comments.

Sincerely,

Stephen Merkel, Chairman