



November 19, 2010

The Honorable Gary Gensler  
Chairman  
Commodity Futures Trading Commission  
1155 21 Street NW  
Washington, DC 2058

The Honorable Mary Schapiro  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Chairmen Gensler and Schapiro,

The Wholesale Markets Brokers Association, Americas (“WMBAA” or “Association”) appreciates the opportunity to submit to the U.S. Commodity Futures Trading Commission (“CFTC”) and the U.S. Securities and Exchange Commission (“SEC” and, collectively with the CFTC, the “Commissions”) general comments for your consideration. We appreciate the great efforts of both Commissions to implement regulations under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) and are supportive of steps taken to ensure stability in over-the-counter (“OTC”) derivatives markets.

As you and your fellow Commissioners discuss staff proposals for rules governing swap execution facilities and security-based swap execution facilities (“SEFs”) and other related issues, the WMBAA offers the following comments for your consideration.

**Pre-trade Transparency**

The SEF provisions in the Dodd-Frank Act contain a rule of construction that the goal is, in part, “to promote pre-trade transparency in the swaps market.” Currently, the WMBAA member firms each operate trading facilities that thrive as competitive sources of liquidity because each facility naturally and consistently disseminates market information to all its participants, with the express purpose of matching buyers and sellers. As these fundamental principles are applied to the establishment of SEFs, which themselves permit multiple participants to accept bids and offers made by multiple participants in the facility, the notion of intermediaries providing market information to participants in an effort to create liquidity is one that the WMBAA recognizes as essential to the vitality of OTC derivatives markets.

WMBAA members are supportive of providing information to their participants through multiple modes of communication, depending on the depth of liquidity and trading frequency of the asset class, to ensure access to competitive pricing for counterparties. Further, the WMBAA recognizes

the required compliance with core principles that include a mandate to (i) establish and comply with trading procedures for entering and executing large notional swap or security-based swap transactions (block trades) traded on the facility and (ii) comply with the Commission-established time delay for reporting block trades. In addition, the provisions in the Dodd-Frank Act related to the public reporting of swap and security-based swap transaction data require that, with respect to the providing for the public availability of transaction and pricing data, rules promulgated by each Commission must protect the identity of counterparties and take into account whether public disclosure will materially reduce market liquidity. The WMBAA believes that the Commissions should work carefully to ensure that any reporting regime, whether for pre- or post-trade information, adequately protects these interests and does not jeopardize OTC derivatives as an effective source of liquidity.

The WMBAA urges the Commissions to consider the difficulties associated with complying with pre-trade price transparency requirements, on the one hand, and delayed reporting of trade information for those transactions that qualify as block trades. The publication of pre-trade price information does not comport with the notion that, in certain instances, trade information should be reported on a delayed basis to protect trade information and counterparty anonymity. In addition, in reviewing the organization of the Dodd-Frank Act, the WMBAA respectfully submits that the block trade reporting delay, an obligation specifically enumerated in the Dodd-Frank Act, takes precedence in implementation when compared with the rule of construction provision which indicates that a goal of the legislation is to merely promote pre-trade transparency. For that reason, the WMBAA believes the Commissions should place great emphasis on complying with the “requirements” of Sections 727 and 763(i) with regard to block trading, ensuring liquidity of markets and preserving anonymity of parties to a trade as they relate to public reporting of trade information and ensuring that those requirements are not conflicted in the pursuit of a “goal” of pre-trade transparency as described in a rule of construction in the Dodd-Frank Act.

### **Multiple Modes of Execution**

A SEF, by definition, may facilitate the trading or execution of swaps and security-based swaps “through any means of interstate commerce.” The WMBAA strongly supports the use of electronic, voice and hybrid trading methods to bring parties together and foster a competitive OTC derivatives market. This flexibility allows U.S. markets to stay competitive, and provides greater options in servicing the needs of market participants. The WMBAA embraces technological advances that provide future advances in communication methods, furthering transparency and liquidity to as many market participants as is warranted.

The availability of multiple modes of execution widens the scope of products which can be traded more frequently, broadening the base of buyers and sellers participating in even deeper markets. This increased trading activity results in higher trade volumes and more standardized transactions, which will ultimately bring more clearable trades, and thus accomplishing one of the primary objectives of the Dodd-Frank Act.

### **Nondiscriminatory Access to Clearing**

As competitive swap execution facilities, the WMBAA members firmly believe that the nondiscriminatory access to central clearinghouses provided by the Dodd-Frank Act is necessary to the foundation of competitive, liquid markets that provide affordable access to OTC derivatives products. Any restrictions imposed on market participants' access to clearing will result in disparate levels of transparency and preclude certain derivatives counterparties from the benefits of efficient markets.

### **Public Reporting of Transaction Data; Treatment of Block Trades**

As previously discussed, both Commissions are authorized to write rules to facilitate block trades. In general, the WMBAA is supportive of trade reporting for all trades as soon as technologically practicable. The Association believes that all trade reporting, regardless of size, should be reported to the swap data repositories.

As interdealer brokers involved in the formulation and execution of large derivatives transactions between swap and security-based swap dealers, the distinction between block and non-block trades is vital to ensure OTC derivatives markets can continue to provide liquidity to and be a source for risk mitigation for businesses. Further, the CFTC and SEC need to carefully structure a clearing and reporting regime for block trades that protects counterparties' identities and provides for the transacting of larger transactions without unnecessary regulatory burdens.

While the WMBAA believes that each asset class has a threshold amount that could be calculated and used to distinguish between typical and block trades, its primary concern is that the block trade exception be set at such a level that trading may continue without impacting market participants' ability to exit or hedge their trades. In addition, while the appropriate threshold amount will differ by asset class, the notion of a block trade involves more than merely the size of a transaction. A block trade is frequently assembled through a series of actions. The WMBAA believes it is appropriate to provide regulators with necessary market information for oversight purposes, but the public dissemination of incremental activity that would otherwise constitute a block trade could jeopardize identification of counterparties and materially reduce market liquidity, which does not comport with the reporting goals enumerated in the Dodd-Frank Act.

Finally, the WMBAA is committed to any regulatory regime promulgated with electronic trade reporting requirements. As the WMBAA's member firms have historically demonstrated through successful Trade Reporting and Compliance Engine ("TRACE") reporting, these firms have the capabilities to comply with any requirement for reporting swap and security-based swap transaction data as soon as technologically practicable. Further, WMBAA members are willing to report this information to any entity designated by each Commission, including a swap/security-based swap data repository or the Commission itself.

### **SEF Rule Enforcement**

In order to ensure that SEFs establish and enforce consistent rules with each other, it has been suggested that a self-regulatory organization (“SRO”) would be established (or contracted with) to ensure uniformity in investigations and enforcement. The WMBAA supports ensuring that competitive SEFs are equal in enforcing trading rules, but believes that any SRO must demonstrate adequate independence in its organization and enforcement of rules in order to carry out this important function. Furthermore, the WMBAA believes that while the regulatory compliance responsibility cannot be shifted from a SEF to a separate SRO, SEFs should be permitted to contract with an SRO to provide regulatory services to help ensure consistent application of rules under Core Principle number two.

### **Impartial Access**

The SEF core principles in the Dodd-Frank Act require SEFs to “establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules,” including means “to provide **market participants** with impartial access to the market [emphasis added].” The WMBAA member firms fully expect that, under the Dodd-Frank Act, each facility’s participants should and will have impartial access to the facility.

However, any expansion of the impartial access requirement beyond market participants should be considered to be outside of the text of the Dodd-Frank Act. Requiring that each SEF provide impartial access to other SEFs, which are intermediaries and not market participants, would have a stifling effect on competition, to the ultimate detriment of SEF participants. Because these trading platforms compete to offer superior service, technology, liquidity and commission prices to each other, allowing SEFs knowledge of each other’s price quotes would allow facilities with lower quality services to exploit this information for their gain and potentially cause a “race to the bottom.” The end result would be that SEFs would only match the lowest common denominator with respect to facility characteristics, to the detriment of market participants who currently benefit from the fruits of a competitive marketplace. Rules implementing the SEF core principles should foster the environment of competitive, aggressive facilities to ensure affordable access to and readily-available liquidity for various asset classes. The WMBAA agrees that SEFs should provide “impartial access” to market participants, but not to competing SEFs.

We would like to thank both of you, your fellow Commissioners, and the staffs at the Commissions for being so willing to consider our opinions and for conducting an open and transparent rulemaking process. We appreciate the opportunity to share our opinions with you and are available to discuss with you and your staffs at any time.

Sincerely,



Julian Harding, Chairman

cc: Michael Dunn, Commissioner, CFTC  
Jill Sommers, Commissioner, CFTC  
Bart Chilton, Commissioner, CFTC  
Scott O'Malia, Commissioner, CFTC

Kathleen Casey, Commissioner, SEC  
Elisse Walter, Commissioner, SEC  
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Troy Paredes, Commissioner, SEC