

MEMORANDUM

TO: File S7-34-10
FROM: Kathleen Gray
RE: Meeting with Cleary Gottlieb Steen & Hamilton LLP, et al. regarding interim final rules for reporting of pre-enactment unexpired swap and security-based swap transactions
DATE: January 12, 2011

On December 10, 2010, Susan Nathan, David Taylor, Jeff Burns, and Bill Banwo from the Commodities Futures Trading Commission (CFTC); and Heather Seidel, David Michehl, Yvonne Fraticelli, Natasha Cowen, and Kathleen Gray from the Division of Trading and Markets of the Securities and Exchange Commission (SEC) had a telephonic meeting with Edward Rosen (Partner, Cleary Gottlieb Steen & Hamilton LLP). The discussion included, among other things, record retention requirements in the interim final swap and security-based swap reporting rules. Other participants on the call included representatives from Barclays Capital, Credit Suisse, Bank of America, Citi, Credit Agricole, Deutsche Bank, Goldman Sachs, Morgan Stanley, HSBC, UBS, PNC Bank, BNP Paribas, Wells Fargo, and Nomura.

AGENDA FOR CONFERENCE CALL
SEC-CFTC Staff Joint Conference Call to Discuss
Record Retention Requirements in the Interim Reporting Rules
Tuesday, November 16, 2010 at 9:00 A.M.

I. Participants seek clarification on the following provisions:¹

1. “[E]ach counterparty to a pre-enactment [unexpired swap/SBS] transaction that may be required to report such transaction” to “retain, in its existing format, all information and documents, [if available,] to the extent and in such form as they [currently/presently] exist, relating to the terms of a [swap/pre-enactment SBS] transaction, including but not limited to . . .”
 - a. Clarify the meaning of the phrase “relating to the terms of a [swap/pre-enactment SBS] transaction”.
 - b. Clarify application to transactions that expire after enactment but before effectiveness of reporting requirements.
 - c. Clarify where records may be maintained.
2. “. . . any information necessary to identify and value the transaction; . . .”
 - a. Clarify the meaning of the phrase “necessary to identify and value”.
3. “. . . the date and time of the execution of the transaction; . . .”
 - a. Clarify standard for date and time of execution.
 - b. Confirm that no new records are required to be created or retained to satisfy this requirement.
4. “. . . information relevant to the price of the transaction; . . .” (CFTC) / “. . . all information from which the price of the transaction was derived; . . .” (SEC)
 - a. Clarify the meaning of the phrases “information relevant to” and “information from which the price . . . was derived”.
5. “. . . whether the transaction was accepted for clearing [by any clearing agency or derivatives clearing organization] and, if so, the identity of such [clearing organization / clearing agency or derivatives clearing organization]; . . .”

¹ CFTC, 17 CFR § 44, note to ¶¶ (a)(1) & (2); SEC, 17 CFR § 240Aa-2T, note to ¶¶(b)(1) & (2).

- a. Clarify what types of existing records would satisfy this requirement.
- 6. “. . . any modification(s) to the terms of the transaction; and . . .”
 - a. Clarify scope of modifications to be retained.