



BNY MELLON

Raymond J. Dorado
Executive Vice President, Deputy General Counsel

December 7, 2010

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington DC 20581

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Registration Requirement for “Processing of Swaps”

Dear Mr. Stawick and Ms. Murphy:

The Bank of New York Mellon Corporation (“**BNY Mellon**”)¹ appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (“**CFTC**”) and the Securities and Exchange Commission (“**SEC**”) and, together with the CFTC, the “**Commissions**”) on issues related to swaps and security-based swaps (collectively, “**Swaps**”) under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“**Dodd-Frank**”).

Sections 733 and 763 of Dodd-Frank require that a person who “operate[s] a facility for the trading or processing of Swaps” be registered with the Commissions as a swap execution facility, security-based swap execution facility, designated contract

¹ Established in 2007 from the merger of Mellon Financial Corporation and The Bank of New York Company, Inc., BNY Mellon is a global financial services company focused on helping clients manage and service their financial assets, operating in 36 countries and serving more than 100 markets. BNY Mellon is a leading provider of financial services for institutions, corporations and high-net-worth individuals, providing asset management and wealth management, asset servicing, issuer services, clearing services and treasury services through a worldwide client-focused team. It has \$24.4 trillion in assets under custody and administration and \$1.14 trillion in assets under management, services \$12.0 trillion in outstanding debt and processes global payments averaging \$1.6 trillion per day. BNY Mellon’s history spans 225 years from its founding in 1784.



market or national securities exchange (collectively, “**SEF or exchange**”), as appropriate for the type of Swap.² BNY Mellon agrees with State Street Corporation’s view, expressed in its November 24 letter to the Commissions, that “processing of Swaps” in this context should be read to mean trade execution matching and comparison functions that occur before a trade is submitted for clearing. Like State Street Corporation, BNY Mellon does not believe that “processing of Swaps” should be read to include other post-execution activities, including middle-office or back-office processing functions. Such functions include, but are not limited to:

- affirmation and confirmation of trades executed by our clients and/or their investment managers with counterparties;
- valuation of transactions in reliance on third party vendor data;
- reconciliation, involving the matching and identification of discrepancies between trade details relating to executed trades provided to us by our clients and/or their investment managers and their counterparties;
- lifecycle management, involving the capture and processing of events occurring in the lifecycle of a particular derivative transaction; and
- collateral management, involving the determination of appropriate collateral posting and management of the collateral process based on the criteria agreed upon by the parties to the trade in connection with execution of the trade.

We believe that this reading is the only way to reconcile the “processing of Swaps” language with the statutory definitions of SEFs. While there is no reference to “processing” in the SEF definitions, trade execution matching and comparison functions are a necessary part of “the ability to execute or trade Swaps by accepting bids and offers.”³ As a result, oversight of such activities as part of the regulation of trade execution platforms is logical and consistent with the aims of Dodd-Frank. On the other hand, middle-office and back-office processing activities are often not performed by trade execution platforms and, as a result, do not neatly fit into regulatory regimes for the oversight of trade execution. Many such activities are, or can be, regulated by the Commissions under different schemes, such as through the Commissions’ authority over clearinghouses, swap data repositories, swap dealers and major swap participants, among others. Subjecting these activities to the regulatory regime for SEFs and exchanges will lead to unnecessary dual regulation that will be costly to swap market participants and will not further any of the goals of Dodd-Frank.

² Section 733 of Dodd-Frank states that “[n]o person may operate a facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market under this section.” Section 763 of Dodd-Frank states that “[n]o person may operate a facility for the trading or processing of security-based swaps, unless the facility is registered as a security-based swap execution facility or as a national securities exchange under this section.”

³ See the definition of “swap execution facility” in Section 721 of Dodd-Frank and the definition of “security-based swap execution facility” in Section 761 of Dodd-Frank.

As a result, BNY Mellon requests that the Commission clarify, through rulemaking, the reading of “processing of Swaps” described above. Such clarity is necessary for market participants who provide processing services to offer Dodd-Frank-compliant services for clients once Dodd-Frank’s registration requirements become effective.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond J. Dale". The signature is written in a cursive, flowing style with a prominent initial "R".