



**Americans for Financial Reform**  
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To Whom It May Concern:

Americans for Financial Reform (“AFR”) appreciates this opportunity to respond to the Commodity Futures Trading Commission (“CFTC” or “Commission”) request for comments on its “Review of Swap Data Recordkeeping and Reporting Requirements”. AFR is a coalition of more than 200 civil society organizations that have come together to advocate for reform of the financial industry. Members of AFR include major labor, consumer, civil rights, investor, retiree, community, and faith based groups. A list of AFR members is attached.

This request for comments comes more than two years after swaps data recordkeeping and reporting requirements were finalized in January 2012. In the years since the completion of this rule, the reality of swaps reporting has lagged far behind the goal of creating true regulatory transparency for this market. Initial analysis of swaps data produced errors of up to \$55 trillion in simply assessing the size of the market.<sup>1</sup> CFTC commissioner Scott O’Malia has pointed to numerous errors and data quality problems that plague regulatory efforts to aggregate the data from different reporting entities and use it to understand swaps markets on a real-time or close to real-time basis.<sup>2</sup>

This Request gives a sense of the practical problem facing the Commission (CFR 16690):

“At present there are over 150 potential swap data reporting entities registered with the Commission, each of which will have its own business and data standards for listing, executing, or clearing swaps in one or or more of the five asset classes recognized for purposes of the swap data reporting rules...In addition, swaps data may currently be reported to any registered SDR, each of which will also have its own data standards.”

The data quality and data aggregation issues in CFTC-regulated swaps markets are only one part of the larger issue concerning risk exposure measurement and transparency that is faced by the

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<sup>1</sup> Ackerman, Andrew, “[CFTC Misreporting Size of Swaps Market, Agency Says](#)”, Wall Street Journal, December 18, 2013.

<sup>2</sup> Osipovich, Alexander, “[CFTC Has Turned the Corner on Swaps Data](#) Mess”, Energy Risk, February 7, 2014.

entire global financial regulatory community. In the U.S. there are only four swaps data repositories, but globally, there are eighteen repositories over ten different jurisdictions – a challenge much greater than aggregating within a single jurisdiction. A recent consultation paper by the Financial Stability Board admits frankly, “global and comprehensive [swaps] data aggregation is not possible under current arrangements”.<sup>3</sup> AFR commends the CFTC for its leadership in the Aggregation Feasibility Study Group and has supported the AFSG policy option for a centralized global data aggregation mechanism.<sup>4</sup>

The lack of data standardization and the accompanying capacity for aggregation is also a problem for bank regulators, as well as for banks themselves. A recent report by the prudential Senior Supervisor’s Group shows that most major global banks are unable to aggregate even their own major counterparty exposures, even on a T+3 basis. This report makes it even clearer that the lack of ability to produce accurate, reliable, aggregated exposure data creates fundamental risk management problems across the financial system that must be addressed.<sup>5</sup> It is remarkable that almost six years ago, in August, 2008, representatives of the major banks laid out best practices goals that included the capacity to track and aggregate the prior day’s risk exposures ‘within a matter of hours’, yet today we remain so far from that goal.<sup>6</sup> The failure of the major banks to meet their own best practice goals, to say nothing of more detailed and rigorous swaps reporting and record keeping rules, is unacceptable.

AFR’s bottom line position on swaps recording and record keeping is simple: no one involved in swaps regulation should countenance the possibility of another crisis situation in which regulators do not know the details of market participants’ positions. The CFTC must require swaps reporting and record keeping practices that achieve regulatory market transparency. These rules must come with a firm deadline for compliance and stipulated consequences for failure to comply. If a swaps dealer is capable of structuring and marketing a complex swap instrument, it must be capable of also reporting and recording that swap according to data standards and aggregation as agreed by the Commission.

Improving the transparency of financial risk exposures for both regulators of the system and the broader public is a critical priority for financial reform. The failure of regulators to properly monitor and understand risk exposures, particularly in the derivatives markets, was a major contributor to the global financial crisis. Without developing the capacity to track and monitor financial risk exposures in the global markets, including the possible migration of risk exposures to less regulated ‘shadow banks’, financial oversight cannot be comprehensive or reliable. The aggregation and tracking of derivatives data to produce clear and comprehensible metrics of counterparty exposure is central to improved transparency and risk management.

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<sup>3</sup> Financial Stability Board, “[Feasibility Study On Approaches to Aggregate OTC Derivatives Data](#)”, February 4, 2014.

<sup>4</sup> Americans for Financial Reform, “[Comment to FSB Re Feasibility of Aggregating OTC Derivatives Data](#)”, March, 2014.

<sup>5</sup> [http://www.financialstabilityboard.org/publications/r\\_140116.pdf](http://www.financialstabilityboard.org/publications/r_140116.pdf)

<sup>6</sup> <http://www.crmppolicygroup.org/docs/CRMPG-III.pdf>

There is no technical reason why the swaps data reporting and recording standards and practices cannot be harmonized to enable near real time position, risk and financial surveillance. In its 2011 study on algorithmic derivatives, CFTC and SEC staff concluded that<sup>7</sup>:

“...current technology is capable of representing derivatives using a common set of computer-readable descriptions. These descriptions are precise enough to use both for the calculation of net exposures and to serve as part or all of a binding legal contract.”

The staff further concluded that the barriers to this type of standardized representation were:

- 1) A consistent and universal entity identifier for counterparties;
- 2) further analysis of the costs and benefits of electronic representation of derivatives, and
- 3) a uniform way to represent financial terms not covered by existing definitions.

With respect to the first barrier, U.S. and international regulators, led by the Office of Financial Research, are making significant progress on deploying a universal Legal Entity Identifier (LEI) for financial transactions.

As for the analysis of costs and benefits, this is an essentially bureaucratic barrier and no reasonable assessment of costs and benefits should hamper progress in achieving market transparency. Data standardization is classically an area in which private markets may not coordinate due to significant externalities – shared data standards are a public good.<sup>8</sup> Furthermore, they are a public good that lays the groundwork for all effective risk management and oversight, by both regulators and private entities. Uniform data standards for derivatives reporting, even if imposed on private parties, should easily be able to pass an objective cost-benefit test.

The final issue, the uniform representation of novel financial terms not captured in existing definitions, requires the Commission to stipulate that traders file standardized representations of new contract terms before trading new derivatives structures over-the-counter. While this requirement would add an additional step to the process of trading a novel derivative, this necessary addition would have major benefits both for regulatory oversight and for market participant transparency and private risk management. The distinguished risk manager David Rowe – hardly a radical in the area of financial regulation – has championed the mandatory coding of detailed transaction level data in a standardized format:<sup>9</sup>

“..comprehensive and detailed electronic reporting of derivatives and structured security transactions is a win-win proposition, despite the inevitable industry resistance and complaints. Such detailed reporting is also essential if we are to have any chance of detecting and mitigating the impact of future forms of systemic risk”

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<sup>7</sup> Staff of the Commodity Futures Trading Commission and the Securities and Exchange Commission, “[Joint Study on the Feasibility of Mandating Algorithmic Descriptions for Derivatives](#)”, April 7, 2011.

<sup>8</sup> See e.g. p. 21 of the presentation discussion by University of Maryland economist Pete Kyle at Americans for Financial Reform event on the economics of cost benefit analysis, May 8, 2012, available at <http://ourfinancialsecurity.org/blogs/wp-content/ourfinancialsecurity.org/uploads/2012/05/PETE-KYLE-PPT.pdf>

<sup>9</sup> Rowe, David, “[Whither the Office of Financial Research?](#)”, Risk Magazine, November 1, 2010.

With regard to the issue of required standardization of new contract terms, Rowe states:

“insisting on transaction level details would slow the process of quants creating a new structure in a spreadsheet in the morning and dealers actually booking such trades in the afternoon...Nevertheless, demanding that firms be able to represent the structure of any new trades in a standardized electronic form before booking them hardly seems like an outrageous requirement or an unacceptable burden on financial innovation”.

Thus, AFR does not believe that any of the three barriers identified in the algorithmic derivatives study constitute a reason why the Commission should not move ahead with forceful action on the standardized electronic representation of derivatives transactions.

With respect to the almost 200 detailed technical questions asked in this request for information, AFR does not have detailed input on these questions at this time. However, given the importance of this issue we will consider industry responses to these questions, as well as Commission plans for action, and may offer input in the future.

At this time, guided by the considerations laid out above as well as other recent events, we do have several broad recommendations for the Commission in considering the responses to these questions and next steps in the crucial area of derivatives data requirements. These recommendations are:

- 1) The Commission must be willing to take proactive steps to **require** data standardization. The multi-year record of failure to achieve reliable aggregation and analysis of derivatives data is an ongoing embarrassment to financial regulators, and calls for strong action. As discussed above, this failure can be seen not simply at the CFTC, but also in the prudential regulatory space and at the international level. Data transparency and the proper measurement of counterparty risk exposures are the minimum requirements for both effective regulatory surveillance and private sector risk management. The information gathered through this request must not be used to accommodate existing divergence in private sector practices, but as a guide for areas where mandatory standardization is required.
- 2) The Commission should require detailed information related to regulatory exemptions, such as parental guarantees and affiliate structures. Commission rules contain significant regulatory exemptions in cases where e.g. swaps transactions undertaken by a foreign subsidiary are not guaranteed by a U.S. parent entity, or where swaps are conducted between affiliates. Several of the questions in this request for information ask whether information connected to such exemptions should be a required reporting element (see Questions 24 and Question 29(d)). AFR believes that such data should be reported to a Swaps Data Repository (SDR), and that such reporting must contain sufficient detail to allow the Commission to properly audit the use of these exemptions. For example, information on guarantees should include information on the full range of possible types of guarantees, including guarantees that exist at the entity (subsidiary) level rather than

just the swap level. Information on affiliate status should include documentation of shared ownership and the level of such ownership.

- 3) Similarly, the Commission must require sufficient reporting detail to determine whether clearing and execution mandates are being satisfied, and if not, why not. The execution and especially the clearing mandates are at the heart of the U.S. derivatives reforms in Title VII of the Dodd-Frank Act. The clearing mandate is likewise at the heart of the global commitment to derivatives reform agreed to at the 2009 Pittsburgh G-20 summit. Data reported to regulators must make clear whether a swap is subject to the clearing or execution requirement, and also whether such clearing and execution has taken place (Questions 2 and 3). Information related to swaps clearing is particularly important and in general all life cycle information relevant to tracking a swap from initial conception through clearing should be included in swaps reporting (including the reporting of the initial ‘alpha’ swap prior to novation into clearing). Such life cycle information will be particularly useful in tracking trends in clearing use in swaps markets, including both enforcement of the clearing mandate and also the optional use of clearing.
- 4) The Commission should develop a standardized Data Use License for swaps data that supports proper risk analysis throughout the system. Several questions (e.g. Question 64) asks about ownership and commercialization of data. AFR supports many of the general restrictions the Commission has placed on SDR commercialization of data, particularly in cases where such commercialization may lead to incentives for excessive fragmentation and competition in the public utility services provided by SDRs. However, it is crucial that each entity in the system that needs to process swaps data for risk management and analysis – especially DCOs and other types of CCPs – have direct access to whatever data is needed for proper stress testing and risk management. Further, we support the development of a standardized license for data use that would permit the external analysis of swaps data by academics and other regulators attempting to analyze systemic risk in U.S. and global finance.

Thank you for the opportunity to comment on this information request. Should you have additional questions, please contact Marcus Stanley, AFR’s Policy Director, at [marcus@ourfinancialsecurity.org](mailto:marcus@ourfinancialsecurity.org) or (202) 466-3672.

## **Following are the partners of Americans for Financial Reform.**

*All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.*

- AARP
- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Center for Effective Government
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Green America
- Greenlining Institute
- Good Business International

- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defender's League
- Information Press
- Institute for Agriculture and Trade Policy
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club

- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

*List of State and Local Partners*

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC

- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- New Economy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending

- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

***Small Businesses***

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- UNET