

# THE FINANCIAL SERVICES ROUNDTABLE

*Financing America's Economy*



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# ISDA<sup>®</sup>

**International Swaps and Derivatives Association, Inc.**

By Electronic Mail

December 27, 2010 [Draft as of December 17]

Mr. David A. Stawick  
Secretary of the Commission  
Commodity Future Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

[amr@cftc.gov](mailto:amr@cftc.gov)

**Re: RIN 3038-AD12. Business Affiliate Marketing and Disposal of Consumer Information Rules**

Dear Mr. Stawick:

The Financial Services Roundtable (“Roundtable”)<sup>1</sup> and the International Swaps and Derivatives Association, Inc. (“ISDA”)<sup>2</sup> respectfully submit these comments in response to the Commodity Future Trading Commission’s (“CFTC”) notice of proposed rulemaking to implement Section 1088 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). The Roundtable and ISDA support CFTC’s efforts to protect consumer privacy and nonpublic personal information as required by the Fair Credit Reporting Act; are encouraged by the extension of these requirements to CFTC registrants; and appreciate the invitation to provide comments regarding the proposals.

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<sup>1</sup> The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America’s economic engine, accounting directly for \$74.7 trillion in managed assets, \$1.1 trillion in revenue, and 2.3 million jobs.

<sup>2</sup> The International Swaps and Derivatives Association, Inc. is the largest global financial trade association, by number of member firms. ISDA was chartered in 1985, and today has over 830 member institutions from 57 countries on six continents. These members include most of the world’s institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities.

In response to your requests for comment, the members of the Roundtable and ISDA:

- 1) support the CFTC's proposal to adopt an approach consistent with the Agencies with respect to the implementation of section 624, and not restricting which affiliate may provide the initial opt-out notice;
- 2) have no objections to limiting the scope of coverage for the CFTC to the circumstances defined in section 624(a)(4);
- 3) request that the CFTC clarify that the definition of "consumer" does not apply to market makers, individual floor brokers, locals, and other individual persons whose information is not collected to determine eligibility for personal, family, or household purposes, notwithstanding that they are individual persons and not corporate entities.
- 4) have no objections to the proposed definition of the terms "dispose" or "disposal" to mean the discarding or abandonment of consumer information or the sale, donation or transfer of any medium including computer equipment, upon which consumer information is stored;
- 5) have no objection to the reasonableness standards cited, and support the latitude the CFTC provides to each registrants in developing an appropriate compliance program. No further explanation is needed with respect to the proposed standards for disposal.

Section 628(a)(2) of FCRA requires interagency coordination in prescribing regulations. Most of the members of the Roundtable have developed compliance programs for affiliate marketing opt out and consumer information disposal requirements for their banking subsidiaries, which they would also apply to their CFTC registrant subsidiaries. We encourage CFTC to coordinate with the Federal banking agencies in the development of, as the NPR states, "comparable and consistent rules" for business affiliate marketing and disposal of consumer information regulations. We also encourage the CFTC deem compliant those entities which have incorporated the interagency disposal requirements in accordance with a written information security program.

The industry appreciates the past efforts of the CFTC to work with other agencies on privacy issues, such as the 2009 Final Model Privacy Form under the Gramm-Leach-Bliley Act<sup>3</sup>. This collaboration among the agencies created a final product, which is more applicable to a variety of firms and insures against duplication and contradictions.

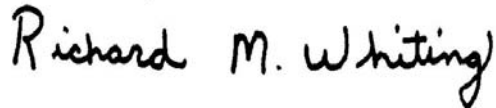
In closing, we support the extension of FCRA requirements to CFTC registrants. However, the Roundtable and ISDA encourage the continued collaboration of the agencies in the implementation of the rules.

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<sup>3</sup> 74 Fed. Reg. 62890 (December 1, 2009)

Thank you again for the opportunity to share our views with you on this subject. If you have any questions, please feel free to contact Rich Whiting at 202-589-2413 or William Henley at 202-589-2402.

Sincerely,

Handwritten signature of Richard M. Whiting in black ink.

Richard Whiting  
The Financial Services Roundtable  
Executive Director and General Counsel

Handwritten signature of Robert C. Pickel in black ink.

Robert Pickel  
International Swaps and Derivatives  
Association, Inc  
Executive Vice Chairman