

May 31, 2011

**Futures Industry Association  
The Financial Services Roundtable  
Institute of International Bankers  
Insured Retirement Institute  
International Swaps and Derivatives Association  
Securities Industry and Financial Markets Association  
U.S. Chamber of Commerce**

**Via Electronic Submission: rule-comments@sec.gov**

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

Re: Re-proposal of Rules Implementing Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Ms Murphy:

We are writing to the Securities and Exchange Commission (“**Commission**” or “**SEC**”) regarding the process by which the Commission will finalize its proposed rules (the “**SEC Proposed Rules**”) establishing a comprehensive new framework for the regulation of security-based swaps under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Dodd-Frank Act**”).<sup>1</sup> Given the Commission’s serious consideration of comments, and the significant comments submitted by a wide range of market participants on the prior proposals, it seems likely that the Commission may revise the prior proposals. We strongly urge the Commission to re-propose the SEC Proposed Rules and provide an implementation timetable and guidance on the extent of their extraterritorial application. This will allow an additional comment period after the rule proposals have been amended to reflect comments received.

We applaud the Commission for demonstrating a clear commitment to a transparent and open rulemaking process. The process for finalizing the SEC Proposed Rules is critical and market participants should have an opportunity to review and comment on revised versions of the rules, and their interdependencies, prior to implementation. Historically, an iterative approach to rulemaking has been taken when rules have an unusually large impact on market structure and participants; allowing for more than one round of comments helps ensure that market participants can more fully assess the implications of a set of rules in their entirety. For example, after the initial release of proposed Regulation NMS, the Commission held public

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<sup>1</sup> We have also commented to the Commodity Futures Trading Commission in response to their action re-opening and extending comment on proposed rules as published in the Federal Register May 4, 2011 and regarding the process by which the CFTC will finalize its proposed rules.

hearings, sought supplemental comments, and re-proposed the entire Regulation NMS for additional comment. Title VII requires the Commission and market participants to implement regulatory changes on an even larger scale, an undertaking that merits a more considered review than is possible with only one round of proposed rules.

The scale of change required in the swaps market by the Dodd-Frank Act, including new trading, reporting and clearing requirements, registrations, compliance regimes, and documentation requirements and the impact on market structure cannot be overstated. Moreover, the ability of market participants to review and provide comments on the proposed Title VII regulatory framework in a timely and comprehensive fashion is further complicated by the need for such entities to simultaneously address many other changes resulting from the Dodd-Frank Act that will impact their businesses.<sup>2</sup> As an indicator of the size of that undertaking, as of the beginning of this month, with approximately 62% of the 387 required rules still to be proposed, regulators had published over three million words of implementing regulation in the Federal Register.<sup>3</sup>

While we appreciate that the Commission has been working diligently to meet legislative deadlines, aspects of the SEC Proposed Rules undoubtedly will require revision, particularly as the proposed rules interact with others. Given the speed and complexity of the regulatory undertaking and interdependencies of the rules, that is not surprising. However, in order to ensure that the substance of the final rules works efficiently as a whole, it is essential that market participants have an opportunity for additional review to comment on the entire framework as envisioned by Congress in Title VII. We endorse Professor Hal Scott's recommendation that the Commission decide a sequence for issuance of final rules, re-propose the entire set of rules, along with plans for implementation, and permit another round of comment on the substance of the proposed set of rules.<sup>4</sup>

The need for a second or subsequent comment period on rule proposals is distinct from the on-going discussions of phase-in of implementation of the rules across markets and market participants. Although phase-in is critical for a smooth implementation of the changes required under the Dodd-Frank Act, it is also essential that rules be appropriately tailored, work in tandem, and avoid unduly impairing market liquidity or adversely impacting investors. It is not enough to phase-in implementation if the final rules themselves are unworkable or in conflict.

In addition, given the highly interdependent relationship between many SEC Proposed Rules, even relatively modest aspects of key provisions (such as the block trade definition, the swap and security-based swap definitions, dealer and major swap participant definitions,

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<sup>2</sup> SEC Chairman Schapiro noted the challenges of Title VII rulemaking and the need for a deliberative approach in testimony before the Senate Committee on Agriculture, Nutrition and Forestry (March 3, 2011).

<sup>3</sup> "Overhaul Grows and Slows," Wall Street Journal (May 2, 2011).

<sup>4</sup> See testimony of Hal Scott, Director of the Committee on Capital Markets Regulation and Professor and Director of the Program on International Financial Systems at Harvard Law School, before the House Committee on Agriculture, Subcommittee on General Farm Commodities and Risk Management (April 13, 2011).

territorial scope, and capital and margin requirements) will dramatically affect the implementation and impact of many other provisions across many other rules. For example, all swaps and security-based swaps that are required to be cleared are required to be executed on an exchange or a swap/security-based swap execution facility, if one makes the swap or security-based swap available for trading. The way in which the "makes available for trading" determination is made will depend on the Commission's trade execution platform rules. The requirement to trade swaps on an electronic system will have significantly different implications on liquidity for different types of instruments that may fall in the definition of "swap" or "security-based swap," terms that have to be further defined by the Commissions.

While changes to some of the SEC Proposed Rules may require re-proposal under the Administrative Procedure Act (the "APA"), an issue which we assume the Commission is considering, our recommendation goes beyond any specific requirements under the APA. Our view is that, given the complexity and interdependency of many of these rules, market participants should have the ability to review and comment on a complete set of rules that has addressed prior comments. This approach is certainly within the spirit of the APA and supports the practical need for further fine-tuning of rules that will have a dramatic impact across the swap markets.

Despite the deadlines imposed by Congress in the Dodd-Frank Act, it is clear that many members of Congress, on both sides of the aisle, believe that the Commission should take any necessary additional time to solicit more feedback.<sup>5</sup> We understand that the Commission may be concerned about additional delay, but re-proposal will only postpone the Title VII rulemaking implementation for a number of months, not years, and the costs of any such delay will be far outweighed by the benefits resulting from further industry, market and public input into, and regulatory deliberation with respect to, the rulemaking process.

We recommend that the Commission re-propose the SEC Proposed Rules in a manner that reflects, as appropriate, the incorporation of prior public comments. We further suggest that the Commission then allow for a final comment period for all the rules in their entirety that runs from the date of the last proposed rule. By providing market participants with the opportunity to comment more meaningfully on the new regulatory structure, the Commission will be better able to draft effective final rules and ensure that it has used a process that provides for the least possibility of unintended consequences, adverse market impact and anti-competitive impact while still achieving the objectives of the Dodd-Frank Act.

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<sup>5</sup> See e.g., February 8, 2011 letter from a bi-partisan group of 12 Senators to the regulators, "... we hope that your agencies will take the time to implement Title VII thoughtfully and to pay particularly close attention to the array of unintended consequences that may arise. If the major overhaul of our derivatives market is implemented hastily, agency rulemakings could have negative effects on our economy at a time when we can least afford it." See also the April 15, 2011 letter from 24 Democratic Congressmen to regulators, arguing that it is important that the "rule-making process be thorough so that we end up with the right result."

We appreciate the opportunity to comment to the Commission and would be pleased to discuss any questions the Commission may have with respect to this letter.

Respectfully submitted,

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**Institute of International Bankers**  
**Insured Retirement Institute**  
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**Securities Industry and Financial Markets Association**  
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cc: The Hon. Mary Schapiro, SEC Chairman  
The Hon. Kathleen L. Casey, SEC Commissioner  
The Hon. Elisse B. Walter, SEC Commissioner  
The Hon. Luis A. Aguilar, SEC Commissioner  
The Hon. Troy A. Paredes, SEC Commissioner