



August 10, 2012

Mr. Frank Fisanich  
Chief Counsel  
Division of Swap Dealer and Intermediary Oversight  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street NW  
Washington, DC 20581

**Re: Request for No-Action Relief: Recordkeeping Requirements under the Internal Business Conduct Rules**

Dear Mr. Fisanich:

The Securities Industry and Financial Markets Association (“**SIFMA**”)<sup>1</sup> hereby requests relief on behalf of SIFMA member firms, similarly situated swap dealers and major swap participants (collectively, the “**Firms**”) from certain recordkeeping requirements in the recently issued Internal Business Conduct Rules.<sup>2</sup> SIFMA respectfully requests that the Division of Swap Dealer and Intermediary Oversight (the “**Division**”) of the Commodity Futures Trading Commission (the “**CFTC**”) confirms it will not recommend that the CFTC take enforcement action against a Firm not in compliance with certain other requirements of Subpart F described herein as of the Compliance Date<sup>3</sup> and for a period of time thereafter as further explained below.

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<sup>1</sup> SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit [www.sifma.org](http://www.sifma.org).

<sup>2</sup> Swap Dealer and Major Swap Participant Recordkeeping and Reporting, Duties, and Conflicts of Interest Policies and Procedures; Futures Commission Merchant and Introducing Broker Conflicts of Interest Policies and Procedures; Swap Dealer, Major Swap Participant, and Futures Commission Merchant Chief Compliance Officer; 77 Federal Register 20128; April 3, 2012; Final Rule (CFTC: RIN 3038-AC96)

<sup>3</sup> The “**Compliance Date**” for CFTC Regulations 23.201 – 23.203, for Firms currently regulated by a U.S. prudential regulator or who are registrants of the Securities and Exchange Commission, is the later of July 2, 2012 or the date on which Firms are required to apply for registration pursuant to CFTC Regulation 3.10. The Compliance Date for CFTC Regulations 23.201 – 23.203, for Firms not currently regulated by a U.S. prudential regulator and not registrants of the SEC, is the later of October 1, 2012 or the date on which Firms are required to apply for registration pursuant to CFTC Regulation 3.10. See Registration of Swap Dealers and Major Swap Participants, 77 Fed. Reg. 20128, 20165 (Apr. 3, 2012). A non-U.S. Firm may delay compliance with CFTC Regulations 23.201 – 23.203 until one year after the publication of the proposed Exemptive Order Regarding Compliance with Certain Swap Regulations (the “**Exemptive Order**”) (*i.e.*, July 12, 2013). See 77 Fed. Reg. 41110 (July 12, 2012). However, for swaps with U.S. counterparties, the Compliance Date for non-U.S. Firms to comply with the daily trading record requirement of CFTC Regulation 23.202 is determined in the same manner as the Compliance Date for U.S. Firms. *Id.* at 41112. We note that for U.S. Firms, delayed compliance with CFTC Regulations 23.201 – 23.203 is specifically carved out from the Exemptive Order.

The implementation of Subpart F requires Firms to extensively restructure the way in which they make and keep transaction and daily trading records for swaps and related cash or forward transactions. Additionally, there are significant technological limitations that make full compliance with certain requirements of Subpart F by the Compliance Date impracticable. Principally, Firms are concerned that there are considerable technological impediments to creating and maintaining records of all communications, and in particular oral communications, of swaps and related cash or forward transactions of the type, and in the manner, required by Subpart F. Moreover, technology is not yet available to maintain transaction records for all types of communications “in a manner identifiable and searchable by transaction and counterparty.”<sup>4</sup> Similar technological difficulties exist with the limited amount of time that Subpart F provides to Firms to transition systems for recording time data (such as time of quotations and time of execution) to Coordinated Universal Time (“UTC”). Additionally, ambiguity in CFTC Regulation 23.203 regarding the location and manner in which relevant swap transaction data should be retained presents significant challenges to Firms. Finally, in all cases, all Firms are in the process of implementing other technical changes as a result of rulemaking under the Dodd-Frank Act, thus creating additional pressures on limited resources in the Firms’ technology and operations departments.

Consequently, for the reasons set out below, SIFMA requests that the Division not recommend that the CFTC take enforcement action against any Firm not in compliance with certain requirements of Subpart F for:

- (i) Six months after the Compliance Date to implement systems to record relevant landline telephone conversations of substantially all relevant personnel located in the United States;
- (ii) One year after the Compliance Date to implement systems to record relevant mobile telephone conversations of substantially all relevant personnel located in the United States;
- (iii) One year after the Compliance Date to implement systems to record relevant landline and mobile telephone conversations of substantially all relevant personnel located outside of the United States in locations where recording infrastructure and/or technology is currently readily available; and
- (iv) One year after recording infrastructure and/or technology becomes available that meets internal control and data security requirements, to implement systems to record relevant landline and mobile telephone conversations of substantially all relevant personnel located outside of the United States in locations where such infrastructure and/or technology is currently not readily available.

In addition, in Sections 2 and 3 of this letter, we request no-action relief for compliance with the requirement to maintain transaction records in a manner searchable and identifiable by counterparty and transaction, as well as the requirement to record time data in UTC. Finally, Section 4 of our letter requests no action relief with respect to certain record retention requirements.

## **1. RECORDING ORAL COMMUNICATIONS**

CFTC Regulation 23.202(a)(1) requires each Firm to make and keep pre-execution trade information, including records of all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading and prices, that lead to the execution of a swap, whether

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<sup>4</sup> See CFTC Regulation 23.201(a)(1) (for transaction records), 23.202(a) (for daily trading records for swaps) and 23.202(b) (for daily trading records for related cash or forward transactions).

communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device or other digital or electronic media. Furthermore, CFTC Regulation 23.202(a) requires each Firm to ensure that its records include all information necessary to conduct a comprehensive and accurate trade reconstruction for each swap and that each transaction record be maintained in a manner identifiable and searchable by transaction and counterparty.

Voice recording of a Firm's swaps activity in the United States is not commonplace. Putting in place the necessary recording systems requires a significant build-out of new technology and hardware. Challenges include sourcing recording equipment, updating current telephone infrastructure and data centers in impacted offices to ensure compatibility, installing equipment for many users across multiple offices in a manner that minimizes disruption, testing installed systems, and training relevant personnel.

#### **a. Landline Recording**

Larger Firms' initial estimates of the required scope of landline recording, subject to additional interpretive guidance, include 2,000 to 5,000 people, some with more than 40% of these people located in European and Asian offices. Certain larger Firms estimate that recording will need to be implemented in more than 90 offices in up to 68 countries. People subject to recording may have both standard phones and more complex trading turrets. In terms of implementation, trading turrets have multiple phone lines and communication functions that must each be manually enabled and tested, resulting in additional work per person. Results of a recent SIFMA survey indicate that at some Firms, more than 40% of people identified for recording have both communication devices. Estimated costs to purchase and install recording systems in the United States alone are currently expected to exceed \$5 million for larger Firms, and require hundreds of hours of in-house and third-party engineering and technical resources.

In addition to the new recording system installations, some of the current telephone and recording infrastructure used by Firms will need to be upgraded given the sophisticated level of recording needed to satisfy the requirements of CFTC Regulation 23.202. Most of the Firms recently surveyed by SIFMA will need to upgrade their existing data retention infrastructure to accommodate new voice recording capabilities. In addition, the Rule 1.31 requirements that voice electronic record storage be non-rewritable and non-erasable will require significant upgrades to most Firms' existing data centers.

Of the SIFMA members surveyed, at least four large Firms have indicated that they are in the process of upgrading the phones of impacted personnel from analog to IP-based systems, which will better facilitate digital recording (rather than tape-based analog recording) and searching of records. The scale of these upgrades is immense. For example, at least one SIFMA member indicated that they plan to upgrade more than 2,400 turrets and 1,350 phones that are potentially subject to recording from analog to IP-based systems, as part of a broader organizational upgrade. Another Firm plans to upgrade 1,200 turrets and 600 phones. These SIFMA members upgrading to IP-based systems have indicated that such upgrades will take between six weeks and seven months depending on the scale of their organization.

Most Firms surveyed agree that a number of data center and phone system changes, including the installation of recording equipment, cannot be made during business hours or during times of high sales volume (*e.g.*, end of quarter) when they present a potential business risk. Key aspects of installation and testing of the new systems, therefore, must be done during nights and weekends.

As the obligation to record telephone conversations requires many Firms to procure a significant amount of new hardware and to develop customized technological solutions, certain Firms have experienced difficulties obtaining the products and services. This has resulted in delays that make it difficult for a substantial majority of Firms to achieve full implementation of the necessary telephone recording systems in advance of the

Compliance Date. Seventy-five percent of Firms surveyed by SIFMA indicated that they are experiencing, or are expecting to experience, some supply delays in connection with their orders of landline recording equipment and software, and that delivery for the largest firms will take between six and twenty weeks, depending on order size and date placed. At least one major vendor has indicated that it might take at least 12 weeks to deliver any recording equipment to the Firms. Based on our member survey, Firms are largely working with four vendors of landline recording services in the United States. While there appear to be approximately nine vendors offering these services, many Firms that SIFMA surveyed are working with the same vendor which is also the vendor reporting 12-week delays for delivery. Further, Firms often must use one vendor due to contractual obligations or because that vendor's equipment is already so embedded into the Firms' existing infrastructure and systems that it would be highly inefficient to change.

Once recording systems have been installed, additional time will be required to properly test the new systems, train the relevant personnel in their use, and implement a process to make reasonably certain that recorded lines can be quickly and efficiently activated (*i.e.*, for new employees or employees that switch seats). Phone and technology support staff require time, potentially outside of normal business hours, to test units on each floor in every impacted office. Technology help desks, business managers, and other support and management personnel will be trained in procedures around new employees or employees that move businesses, desks, or seats.

The obligation to record telephone conversations also gives rise to legal issues in states (such as California<sup>5</sup>) and foreign jurisdictions (such as Germany<sup>6</sup> and China<sup>7</sup>) that require all participants on a call be notified that a particular telephone line is being recorded or that those principals give their affirmative consent prior to a conversation being recorded. Policies are being created to ensure that U.S. state and foreign laws are not violated, that compliant notification and consent processes are developed and tested and, in some circumstances, that written consents be obtained before recording and/or sharing records with the CFTC may occur.

## **b. Mobile Telephone Recording**

Recording mobile telephone conversations presents an even greater challenge than recording landlines. Mobile telephone recording technology is immature, and these early generation products have generally not achieved the levels of stability, performance and scalability that would be considered acceptable for commercial grade products. While SIFMA is aware that mobile telephone recording has been required in the United Kingdom since November of 2011,<sup>8</sup> many firms continue to experience significant implementation and technical challenges including delays in when recording commences, issues with the retrievability of voice records, high rates of dropped calls, loss of caller identification data, and instances where voice records are lost entirely. Approximately 80% of surveyed SIFMA members attempting to deploy such capabilities have reported significant delays or technology issues to date. In particular, those firms that must record more than

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<sup>5</sup> See Cal. Penal Code § 632.

<sup>6</sup> See Bundesdatenschutzgesetz [Federal Data Protection Act], Sep. 1, 2009 BGBl 1 at 2814, § 4 (F.R.G.), available at: [http://www.bfdi.bund.de/EN/DataProtectionActs/Artikel/BDSG\\_idFv01092009.pdf?\\_\\_blob=publicationFile](http://www.bfdi.bund.de/EN/DataProtectionActs/Artikel/BDSG_idFv01092009.pdf?__blob=publicationFile).

<sup>7</sup> See Law of the People's Republic of China on Penalties for Administration of Public Security (17th Meeting of the Standing Committee of the Tenth National People's Congress of the People's Republic of China), Aug. 25, 2005, art. 42 § 6 (P.R.C.), available at: [http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/11/content\\_21899252.htm](http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/11/content_21899252.htm).

<sup>8</sup> See Taping of Mobile Phones (Financial Services Authority Policy Statement 10/17), Nov. 10, 2010, available at: [http://www.fsa.gov.uk/pubs/policy/ps10\\_17.pdf](http://www.fsa.gov.uk/pubs/policy/ps10_17.pdf). Policy Statement 10/17 requires recording and storage, for a period of six months, of certain communications made with, sent from, or received on mobile phones and other handheld electronic communication devices issued by banks, stockbrokers, investment managers and derivative traders. Policy Statement 10/17 has been effective since November 14, 2011.

300 mobile telephones in the United States have very recently reported that the vendors have notified them of additional implementation delays.

Several large firms in the United Kingdom who procured a solution from a major commercial vendor have faced such widespread system failures that they have ceased mobile phone recording altogether. The Financial Services Authority is aware that these firms are working actively with the vendor on system improvements, with a current deployment target of first quarter 2013, at the same time as alternatives are being explored. In general these systems are complex and often require partnerships between carriers and multiple service and system providers to redirect calls, record conversations, transmit, store, reformat, index, search and playback the recordings, some stages of which may be handled by different systems or service providers. These services often have cumbersome deployment protocols involving replacing device SIM cards, and uploading multiple software applications and subsequent updates to affected devices that have proven undependable and time consuming in the field.

In the United States and United Kingdom, there currently appear to be approximately twelve viable providers of mobile phone recording capabilities, although very few offer services in both countries, thus requiring multiple vendor solutions to cover all jurisdictions. No obvious breakout vendors or technologies have emerged at this time. Larger Firms anticipate the need to roll out mobile phone recording to up to 2,500 personnel in the United States, and up to 2,500 additional staff outside the United States. Firms with significant global footprints have reported an apparent lack of recording capabilities in at least 18 countries.<sup>9</sup>

Many of these challenges are typical of first generation technology products, and the market is in the early stages of sorting the initial offerings into likely market leaders based on implementation experiences and performance in the field. Given lead times associated with budgeting for, evaluating, procuring and deploying these products, Firms are limited in how quickly they can shift vendors and products that are not proven in the marketplace, and are also often constrained by any associated infrastructural or software/system changes to accommodate differing products. Of the Firms surveyed by SIFMA that are seeking mobile phone recording services, approximately 80% believe that the vendor solutions currently available are inadequate to meet the requirements of the rule. Firms are, however, actively working with vendors to improve existing offerings, and we expect to see material technological improvements over the next year, as well as likely shifts from initial vendor selections toward products that are able to achieve better performance.

### **c. Foreign Offices**

The implementation problems with landline and mobile telephone recording are further compounded when dealing in many foreign jurisdictions. Along with the infrastructure and vendor challenges described above, there are additional expected delays due to shipping delays, including clearing customs; working in multiple time zones; and software certification. For example, delivery from a U.S. vendor to India, where many Firms have offices, can take an additional eight to twelve weeks from the factory.

In addition, operating in different time zones poses challenges for lab testing and troubleshooting, which requires attention by both U.S. & non-U.S. regional offices in coordination with each other. Firms must also develop policies and procedures to address the laws of certain foreign jurisdictions that require notification of recording as described above in Section 1.a.

Finally, Firms face additional difficulties designing and implementing recording systems for non-U.S. offices by the Compliance Date (or expanding already existing systems in those offices) given the ongoing

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<sup>9</sup> Some of those countries are Australia, Bermuda, Brazil, Canada, the Cayman Islands, France, Germany, Hong Kong, India, Ireland, Italy, Japan, Korea, Netherlands, Singapore, Spain, Switzerland, and Taiwan.

uncertainty regarding the definition of a “U.S. Person” which influences the scope of people subject to such recording.

*Accordingly, for these reasons and the reasons set forth below, SIFMA respectfully requests, on behalf of the Firms, that the Division not recommend that the CFTC take enforcement action against any Firm not in compliance for (i) an additional six months after the Compliance Date for Firms to install systems to record relevant landline telephone conversations of substantially all relevant personnel located in the United States involved in swaps activity, (ii) an additional year after the Compliance Date for Firms to install systems to record relevant mobile telephone conversations of substantially all relevant personnel located in the United States involved in swaps activity, (iii) an additional year after the Compliance Date for Firms to install systems to record relevant landline and mobile telephone conversations of substantially all relevant personnel involved in swaps activity and who are located outside of the United States in locations where recording infrastructure and/or technology is currently readily available, and (iv) one additional year after recording infrastructure and/or technology becomes available that meets internal control and data security requirements, to implement systems to record relevant landline and mobile telephone conversations of substantially all relevant personnel located outside of the United States in locations where such infrastructure and/or technology is currently not readily available.*

## **2. MAKING TRANSACTION RECORDS IDENTIFIABLE AND SEARCHABLE BY TRANSACTION AND COUNTERPARTY**

The final version of CFTC Regulations 23.201(a)(1), 23.202(a) and 23.202(b), respectively, require each Firm to maintain transaction records in a manner “identifiable and searchable” by transaction and counterparty. The wording of this requirement, modified from earlier language requiring “tagging” of records, appears to suggest a softening in expectations but remains ambiguous as to underlying technology and process requirements. The implications of this requirement are particularly acute in the context of voice records. A recent survey of SIFMA members, indicates that no member is aware of a vendor solution currently available which can fully satisfy the requirements of the relevant CFTC rules requiring that records be “identifiable and searchable” by transaction and counterparty. While a number of vendors have proposed potential solutions, none of these solutions are mature enough for production and their technical and business process feasibility remains in question.

While this section of our letter focuses on the significant issues relating to the identification and searchability of oral transaction records, we note at the outset that the challenges described herein are not unique to oral communications and Firms would appreciate relief with respect to all transaction records.

In modifying this requirement, the CFTC acknowledged that the earlier proposed requirement to compile the required records by transaction and counterparty in separate electronic files would pose a significant burden, and that Firms could instead “maintain searchable databases of the required records without the added cost and time needed to compile records in individual electronic files.”<sup>10</sup> Furthermore, the CFTC stated its intention that “this rule, as modified, does not require the raw data in such databases to be tagged with transaction and counterparty identifiers so long as the SD or MSP can readily access and identify records pertaining to a transaction or counterparty by running a search on the raw data.”<sup>11</sup> While SIFMA appreciates the CFTC’s acknowledgment of the challenges in complying with these requirements, the change in language

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<sup>10</sup> 77 Fed. Reg. 20128, 20132 (Apr. 3, 2012).

<sup>11</sup> *Id.*

in the rule from a “tagging” to a “searchability” requirement is ambiguous from a technology perspective. In short, some records may not have an explicit textual reference to a transaction or counterparty, but system enhancements could improve data references that are available, with associated benefits to records retrievability.

As an example of the technological difficulties with maintaining voice records in an identifiable and searchable format, a number of Firms point to the United Kingdom where they employ systems to store recordings along with associated metadata such as the time the call occurred, and other details such as the phone number from which the call was sent and received, to the extent such data was available from the telecom provider and internal systems. These systems are however limited and in their current form would not appear to be sufficient to satisfy in full the requirements under Subpart F. The technology currently only allows Firms to tag a subset of incoming swap-related calls by business organization. Where the caller has a number that is stored in a client/counterparty contact management system, that number can be traced to the business organization from which the call was made. Thus, if ABC Corp. calls a Firm’s trader regarding a derivatives transaction, the Firm’s system would identify that call with a tag for ABC Corp.

However, these systems still do not allow Firms to (i) identify the transaction or (ii) identify the counterparty in cases where the number is not contained in the system or is otherwise blocked or masked, which may be the case in more than half of all calls. One Firm noted that, based on an analysis of one day’s telephone calls at its London office where a comparable system is used for recording conversations of its derivatives personnel, of the approximately 20,000 calls made or received that day, only 43% of those calls were made to or from a telephone number stored in the system. Further, some conversations may occur with an investment adviser on behalf of a counterparty, discuss multiple transactions with multiple counterparties, or occur before a transaction has been established and identified in the Firm’s system. Similarly, if ABC Corp. has multiple trading entities, or is transacting on behalf of multiple sub-accounts, the calling line identification information may not be sufficient to identify the specific counterparty.

Some Firms are commencing projects to enhance the ability of voice recording systems to store references to available phone numbers and associated persons and companies maintained in their client relationship management systems. One large firm has estimated that such a project is expected to be completed in several phases over a period of approximately nine months at a cost of approximately \$1 million. As more sophisticated technology becomes available, Firms would then, in consultation with the CFTC, work to create a reasonable timeline to implement systems that permit better compliance with Subpart F. Given the complexities described above, it is unlikely that accurate technology to automatically identify oral communications will be available in the near term.

Similar issues to those described above also exist for making records of electronic mail and other electronic communications identifiable and searchable by transaction and counterparty, and Firms will require additional time after the Compliance Date to develop methodology and potential system improvements for those records.

***SIFMA respectfully requests, on behalf of the Firms, that the Division not recommend that the CFTC take enforcement action against any Firm not in compliance with the obligation to create and maintain transaction records in a manner identifiable and searchable by transaction and counterparty under CFTC Regulations 23.201(a)(1), 23.202(a) and 23.202(b), and permit reliance upon existing search capabilities in these systems as satisfactory to achieve compliance.***

### 3. RECORDING QUOTATIONS PRIOR TO AND AT THE TIME OF EXECUTION

CFTC Regulations 23.202(a)(1)(ii) and (a)(2)(iv) (applicable to swaps) and 23.202(b)(3) and (b)(4) (applicable to related cash or forward transactions) require each Firm to keep a record of the date and time, to the nearest minute, using UTC, by timestamp or other timing device, of (i) each quotation provided to, or received from, the counterparty prior to execution and (ii) the time of execution.

Most Firms do not presently use UTC. Current market practice is for timestamps to use local time. One Firm reports the conversion to UTC will require the update of at least 50 trade capture systems. While Firms are able to commit to using UTC as the time recording standard for all new systems installed or upgraded after the Compliance Date, modifying legacy systems to record in UTC will be expensive, time-consuming and will require significant upgrades to such systems. Firms would nonetheless commit to modifying legacy systems as soon as practicable after the Compliance Date. In the interim, Firms would propose to satisfy the UTC recordkeeping requirement with respect to records created by legacy systems after the Compliance Date by conversion, rather than at the time of creation; any time data that was not initially recorded in UTC would be converted by the relevant Firm to UTC promptly upon request.

***SIFMA respectfully requests, on behalf of all Firms, that the Division not recommend that the CFTC take enforcement action against any Firm not in compliance for an additional one year after the Compliance Date for Firms to convert substantially all legacy systems that record quotation or transaction times in local time into UTC. During that interim period, each Firm would enable any time data previously recorded in local time to be convertible to UTC within a reasonable time after a regulatory request for the time data.***

### 4. RETENTION OF REQUIRED RECORDS

CFTC Regulation 23.203(a) requires that all records required pursuant to CFTC Regulation 23.203 be kept by a Firm “at the principal place of business of the swap dealer or major swap participant or such other principal office as shall be designated by the swap dealer or major swap participant.”

SIFMA confirms that market participants generally have sufficient capacity or are able to access capacity to store the significant amounts of data required to be stored pursuant to CFTC Regulation 23.203 for the duration applicable for each type of record. However, certain Firms, and especially those with global swaps businesses, presently store swap and related cash or forward transaction data at a number of different sites, both within the United States and abroad, including at their own or external data centers and at third-party hosted technology systems. From a plain reading of CFTC Regulation 23.203(a), we interpret the rule to permit a Firm to keep transaction records at multiple physical locations (including remotely at its own or external data centers or at third-party hosted systems) provided that such records are retrievable at a location that is a “principal office” of the Firm that has been notified to the CFTC.

If CFTC Regulation 23.203(a) requires all records to be held (either physically or electronically) at a single physical location, including data pertaining to non-U.S. counterparties, the obligation to migrate all of the required data to a single physical location will require many Firms to substantially modify their data storage systems, will not materially increase the speed of access, and may, in certain jurisdictions such as Germany<sup>12</sup>, Switzerland<sup>13</sup>, and Luxembourg,<sup>14</sup> be contrary to local data protection laws, particularly if such data is

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<sup>12</sup> See Bundesdatenschutzgesetz [Federal Data Protection Act], Sep. 1, 2009 BGBL 1 at 2814, § 4b (F.R.G.), available at: [http://www.bfdi.bund.de/EN/DataProtectionActs/Artikel/BDSG\\_idFv01092009.pdf?\\_\\_blob=publicationFile](http://www.bfdi.bund.de/EN/DataProtectionActs/Artikel/BDSG_idFv01092009.pdf?__blob=publicationFile).

<sup>13</sup> See Letter from Patrick Raaflaub, Swiss Financial Market Supervisory Authority to CFTD, July 5, 2012, available at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58317>



required to be made available upon request to U.S. regulators without the consent of the relevant counterparty. These laws may therefore pose challenges for full compliance with CFTC Regulation 23.203. Such a reading of the rule seems unlikely to be intended, as it would be contrary to other regulatory recordkeeping requirements mandating redundancy and physical separation of electronic records and supporting infrastructure for information security and disaster recovery purposes.

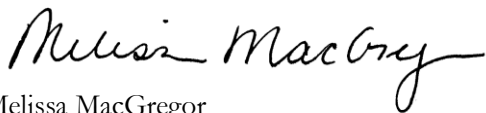
***SIFMA respectfully requests that the Division will not recommend that the CFTC take enforcement action against a Firm that stores data required to be maintained pursuant to Subpart F (i) at the Firm's foreign branches or affiliates or (ii) on its supporting technology infrastructure, including its own or external data centers and third-party hosted technology systems; provided that, in each case, such data is retrievable from one or more locations of the Firm designated as a "principal office." Moreover, if a Firm reasonably believes, based on local legal advice, that transferring or providing access to data created or stored in a foreign jurisdiction would violate laws in the relevant non-U.S. jurisdiction where data is held, counterparties are located or swap activity conducted, SIFMA respectfully requests that the Division confirm that the Division will not recommend that the CFTC take enforcement action against such Firm, based on principles of international comity.***

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SIFMA understands that maintaining appropriate and complete transaction and daily trading records is essential in bringing transparency to and building confidence in how Firms conduct their swaps activities, and SIFMA is committed to helping all Firms satisfy each of the Subpart F requirements as soon as practicable. Notwithstanding these efforts, the technology that exists today is not sufficiently advanced to permit compliance with certain requirements of Subpart F. Through SIFMA working closely with the CFTC, technology service providers and other market participants can better understand the technological issues and barriers to compliance, and all interested parties can create a reasonable timeframe within which Firms can take appropriate steps to comply with all of the Subpart F obligations in an orderly and efficient manner.

SIFMA looks forward to discussing these issues further with the Staff. Please contact me at 202-962-7385 or [mmacgregor@sifma.org](mailto:mmacgregor@sifma.org) if you have any questions.

Yours sincerely,



Melissa MacGregor  
Managing Director and Associate General Counsel

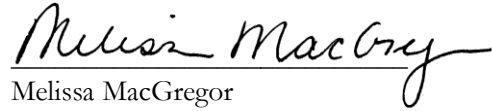
cc: Frank N. Fisanich, Chief Counsel, CFTC  
Ward P. Griffin, Counsel, CFTC  
Hannah Ropp, Economist, CFTC  
David Lucking, Allen & Overy

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<sup>14</sup> See Law of 5 April 1993 on the Financial Sector, Apr. 5, 1993 Mém. A 1993 at 462, art. 41 (Lux.), available at: [http://www.imolin.org/doc/amlid/Luxembourg\\_Law\\_1993.pdf](http://www.imolin.org/doc/amlid/Luxembourg_Law_1993.pdf).

**Certification Pursuant to Commission Regulation 140.99(c)(3)**

As required by Commission Regulation 140.99(c)(3), I hereby (i) certify that the material facts set forth in the attached letter dated August 10, 2012 are true and correct to the best of my knowledge; and (ii) undertake to advise the Commission, prior to the issuance of a response thereto, if any material representation contained therein ceases to be true and complete.

  
Melissa MacGregor