



April 24, 2014

**Via Electronic Submission: <http://comments.cftc.gov>**

Melissa D. Jurgens  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

**Re: Interim Final Rule on Swap Data Repositories - Access to SDR Data by Market Participants (RIN 3038-AE14)**

Dear Ms. Jurgens:

Managed Funds Association<sup>1</sup> (“MFA”) is pleased to have the opportunity to submit comments to the Commodity Futures Trading Commission (the “CFTC” or the “Commission”) in strong support of its interim final rule on “Swap Data Repositories - Access to SDR Data by Market Participants” (the “Amended SDR Access Rule”).<sup>2</sup> MFA appreciates the Commission’s important revision that will protect counterparty anonymity with respect to all swaps that are anonymously traded on designated contract markets (“DCMs”) and swap execution facilities (“SEFs”) and then cleared in accordance with the Commission’s straight-through-processing requirements.<sup>3</sup> By amending Section 49.17(f)(2) of the CFTC’s final rules on “Swap Data Repositories: Registration Standards, Duties and Core Principles”,<sup>4</sup> the Amended SDR Access

---

<sup>1</sup> Managed Funds Association (MFA) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

<sup>2</sup> 79 Fed. Reg. 16672 (March 26, 2014) (the “Interim Rule Release”), available at: <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2014-06574a.pdf>.

<sup>3</sup> See CFTC Final Rules on “Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management”, 77 Fed. Reg. 21307 (April 9, 2012), available at: <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-7477a.pdf>.

<sup>4</sup> CFTC Final Rule on “Swap Data Repositories: Registration Standards, Duties and Core Principles”, 76 Fed. Reg. 54538 (Sept. 1, 2011).

Ms. Jurgens  
April 24, 2014  
Page 2 of 2

Rule will ensure that a counterparty to such a swap cannot later access the identity of the other counterparty to the swap from a registered swap data repository (“**SDR**”). Without this formal revision to Section 49.17(f)(2), a counterparty to an anonymously traded and cleared swap could have secured private information from an SDR regarding the identity of the other counterparty to that swap, or that counterparty’s clearing member. MFA strongly agrees with the Commission’s analysis that Section 49.17(f)(2) must be read with reference to the privacy obligations imposed on SDRs in Section 21(c)(6) of the Commodity Exchange Act.<sup>5</sup> In MFA’s view, the Amended SDR Access Rule is required to ensure that SDRs maintain the privacy of such information. As MFA previously noted, counterparty access to such private information would pose a risk of introducing non-competitive distortions into the marketplace, and could in particular undermine the evolution of anonymous trading on DCMs and SEFs, both of which are unintended outcomes.<sup>6</sup>

\*\*\*\*\*

We thank the Commission for issuing the Amended SDR Access Rule and the opportunity to provide comments on it. Please do not hesitate to contact the undersigned or Laura Harper at (202) 730-2600 with any questions the Commission or its staff might have regarding this letter.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell  
Executive Vice President, Managing Director &  
General Counsel

cc:

The Hon. Mark P. Wetjen, Acting Chairman  
The Hon. Scott D. O’Malia, Commissioner

---

<sup>5</sup> In the Interim Rule Release, the Commission noted that it is adopting the Amended SDR Access Rule based on the following rationale: “to clarify the scope of § 49.17(f)(2) by making explicit the limitation on counterparty access to data and information related to an anonymously executed, cleared swap that applies by virtue of the privacy requirements of CEA section 21(c)(6)”. Interim Rule Release at 16674.

<sup>6</sup> See MFA’s letter requesting interpretive guidance from the CFTC’s Division of Market Oversight, dated February 28, 2013, on swap counterparty access to legal entity identifiers in SDR data and information, which is cited in footnote 15 of the Interim Rule Release at 16674, and attached for reference as an appendix to this letter.



## Appendix

February 28, 2013

### **Via Electronic Mail:**

Mr. Richard A. Shilts  
Director  
Division of Market Oversight  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

### **Re: Request for Interpretive Guidance — Swap Counterparty Access to Legal Entity Identifiers in SDR Data and Information**

Dear Mr. Shilts:

Managed Funds Association<sup>7</sup> submits this letter to the Division of Market Oversight (the “Division”) of the Commodity Futures Trading Commission (the “CFTC” or the “Commission”) to request interpretive guidance to prevent any breach of counterparty anonymity with respect to all cleared swaps for which records are held in a registered swap data repository (“SDR”). Specifically, we seek confirmation that at no time may a party to a cleared trade gain access to the legal entity identifier (“LEI”) of either the cleared trade’s original executing counterparty or that counterparty’s clearing member, or any other information that would identify these entities, notwithstanding that this information may be included in the data maintained by the SDR.

#### **I. Background**

Under Section 49.17(f)(1) of the CFTC’s final rules on “Swap Data Repositories: Registration Standards, Duties and Core Principles” (“Final SDR Rules”)<sup>8</sup>, an SDR must protect

<sup>7</sup> Managed Funds Association (“MFA”) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and all other regions where MFA members are market participants.

<sup>8</sup> CFTC Final Rule on “Swap Data Repositories: Registration Standards, Duties and Core Principles”, 76 Fed. Reg. 54538 (Sept. 1, 2011).

the confidentiality of swap data and may not disclose it to market participants. Section 49.17(f)(2) of the Final SDR Rules provides an exception to this prohibited access rule, allowing a party to a particular swap to have access to “data and information” related to such swap.<sup>9</sup> The Final SDR Rules do not define the broad phrase “data and information”. For swaps that are anonymously traded on designated contract markets (“DCMs”) and swap execution facilities (“SEFs”) and then cleared in accordance with the Commission’s straight-through-processing requirements,<sup>10</sup> the SEF must report the swap transaction data and information to the SDR, which includes the LEIs or the Commission’s “CFTC Interim Compliant Identifiers” (“CICIs”) of the original counterparties. If an original counterparty can access the LEI or CICI of the other original counterparty from the SDR, such original counterparty can also determine its counterparty’s identity by accessing DTCC’s CICI database utility.

MFA strongly believes that for any swap that is cleared, there is no proper purpose for a party to the cleared swap to know the identity of its original executing counterparty. Once the registered derivatives clearing organization (“DCO”) accepts the trade for clearing, the trade exists only as a cleared trade. More specifically, when two counterparties agree to enter into a cleared swap, the swap is formed upon the DCO’s acceptance of the swap, which is now occurring effectively in real time after trade execution. The obligations to perform on a cleared trade run only between the DCO and the party to the trade and its agent clearing member. In a cleared trade, the DCO is the sole counterparty to each of the original transacting parties, and, again, the original transacting parties have no rights or responsibilities with respect to each other with respect to the cleared swap. The SDR has no role in formation of the trade and the trade’s submission to the DCO for clearing acceptance. The SDR acts solely to register swap data and information regarding cleared swaps.

As set forth in our proposal below, our requested guidance from the Division would prevent an original counterparty from accessing its original transacting party’s LEI or CICI from the SDR for any cleared swap. Without formal clarification from the Division, such access would enable the original counterparty to determine the identity of its original transacting party for a cleared swap. As we stated above, there is no legitimate business reason for any original transacting party to a cleared swap to secure information regarding the identity of the other original transacting counterparty of a cleared swap, or that counterparty’s clearing member. Allowing parties to do so would compromise their anonymity. Such disclosure could reveal proprietary information, could be used to introduce non-competitive distortions into the marketplace, and could in particular be damaging to the evolution of anonymous trading on DCMs and SEFs.

---

<sup>9</sup> *Id.* at 54582.

<sup>10</sup> See CFTC Final Rules on “Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management”, 77 Fed. Reg. 21307 (April 9, 2012), available at: <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-7477a.pdf>.

## **II. Proposal**

MFA strongly believes that the loss of counterparty anonymity for cleared swaps is an unintended outcome of the broad reference to “data and information” in section 49.17(f)(2) of the Final SDR Rules. We therefore request that the Division issue formal guidance to clarify that SDR “data and information” that may be accessed by a party to any cleared swap should never include the LEI or CICI of its original executing counterparty or that counterparty’s clearing member, or any other information that would identify these entities.

With respect to uncleared swaps, we do not have the same concerns and objection to the disclosure of an original counterparty’s LEI or CICI, both in light of the ongoing obligations of the bilateral counterparties to each other, and also as we believe this data field may under current practice be relevant for purposes of trade reconciliation and validation of swap counterparty exposure and risk management.

\*\*\*\*\*

We appreciate the Division’s prompt consideration of this request. If the Commission or its Staff has questions, please do not hesitate to call the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell  
Executive Vice President, Managing Director &  
General Counsel