Comments of Swap Financial Group, LLC on Proposed Rule regarding Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 17 CFR Parts 23 and 155

Reference: RIN 3038–AD25

Swap Financial Group, LLC, ("SFG") submits the following comments on the above-reference proposed rule. SFG is the leading swap advisor for end-users of derivative products in the United States. Our clients include large numbers of state and local governmental entities and non-profit organizations (many of whom are "Special Entities" in the language of the statute), in addition to non-financial corporate end-users. Contact information for SFG is: Peter Shapiro, Managing Director, 76 South Orange Ave., Suite 6, South Orange, NJ 07079. Telephone: 973-378-5500. Email: pshapiro@swapfinancial.com.

Our concerns on the proposed rule are as follows:

1. We believe it is in the interests of our clients to allow Swap Dealers to provide ideas to our clients. As long as end-users have the benefit of a qualified swap advisor, we believe Swap Dealers should be able to provide analyses, ideas and even recommendations, and that such activities should not be deemed to constitute "advice" or require that the Swap Dealer be treated as an advisor with the requirements that apply thereto. In our practice over nearly 20 years, we have found that the free flow of ideas benefits our clients. More important, we believe that our clients fully understand that the ideas received from swap dealers must be taken with a degree of skepticism that any knowledgeable person would apply to evaluating ideas provided from an entity that stands to profit from the actions of that entity. While we are certain that there are some entities that are susceptible to believing that a Swap Dealer is providing them with "objective advice" that may in fact be self-serving, any end-user with a qualified swap advisor should be able to appropriately evaluate ideas presented to it by Swap Dealers with the appropriate degree of perspective, understanding the Swap Dealers' motivations with regard to profit and risk. We would strongly recommend that Swap Dealers not be discouraged from presenting ideas, scenarios and recommendations – even highly tailored ones that are specific to a client's circumstances – so long as the client has a qualified advisor. Some of the most useful materials our clients have received have been highly specific recommendations and ideas from Swap Dealers. Although in most cases, these ideas have been heavily modified prior to our clients' entering into transactions, the free flow of information from Swap Dealers has been very helpful in informing the decision making process and has assisted us in helping to provide solid, objective advice.

2. There is a need to clarify the rule with regard to non-profit organizations. The statutes says that a Special Entity can be "any endowment, including an endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986." We believe the rules should clarify that the requirement only applies if an endowment itself is entering into a swap, not a non-profit organization that happens to have an endowment. Many non-profits enter into swaps in order to manage the risks associated with their borrowings (i.e. a university or hospital may enter into a swap to hedge floating rate risk on bonds it issues to build a new facility). This use is unrelated to its endowment, or the investment or hedging activities of its endowment. There are many 501(c)(3)

entities that have no endowment to speak of, but do engage in borrowing for physical facilities, and may use swaps to hedge that borrowing. As written, the proposed rule could be read to mean that such non-profit entities would not fall under the Special Entity requirements, while larger, richer institutions (who presumably need less protection from the law) that have endowments would fall under the requirements, even when their use of swaps had no relation to their endowments. We believe it makes most sense to limit the reach of the Special Entity requirement solely to circumstances where an endowment is using swaps in connection with endowment-related activities.

3. Finally, and not directly in connection with the proposed rule, we strongly believe there is a need to establish a straightforward, harmonized regulatory scheme for swap advisors. The proper functioning of the proposed rule depends, in part, on the ability to establish what constitutes a qualified swap advisor. Existing regulatory schemes are plainly inadequate to this task. As currently constituted, existing rules would require firms like our own to register as Commodity Trading Advisors in order to advise on swaps under the CFTC's jurisdiction, as Registered Investment Advisors to advise on security-based swaps under the SEC's jurisdiction, and as Municipal Advisors to advise on municipal swaps under the MSRB's jurisdiction. Not only is this overly burdensome on the small firms that populate the universe of swap advisors today – but most important, it would be terrible public policy for the CFTC, SEC and MSRB to create a public perception that firms which today are registered as CTA, RIA or Municipal Advisors are deemed by the respective regulators to be qualified to provide swap advice on the types of complex, bespoke derivative products that end-users enter into. There is a need for a single, harmonized regulatory scheme for credentialing and registering swap advisors – both for the protection of the public and for the proper implementation of the proposed rule. We strongly urge the Commission to work together with the SEC and the MSRB to develop a common framework.