Please note that the comments expressed herein are solely my personal views

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- 17 CFR Parts 1, 5, 7, 8, 15, 18, 21, 36, 41, 140, 145, 155 and 166
- RIN Number 3038-AD53
- Adaptation of Regulations to Incorporate Swaps

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your notice of proposed rulemaking: Adaptation of Regulations to Incorporate Swaps.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) established a comprehensive new statutory framework for swaps and security-based swaps. Dodd-Frank repeals some sections of the Commodity Exchange Act (CEA), amends others, and adds a number of new provisions. Dodd-Frank also requires the CFTC to promulgate a number of rules to implement the new framework. The CFTC has proposed numerous rules to satisfy its obligations under Dodd-Frank. Because Dodd-Frank makes so many changes to the existing statutory and regulatory frameworks, the proposed rules would make a number of conforming changes to the CFTC's regulations to integrate them more fully with the new statutory and regulatory framework.

I support these proposed changes as either common sense or statutorily necessary. I have a few comments on some specific issues which you have raised.

Recordkeeping requirements

In particular you have requested comment on the following: the potential costs and effects of the proposed new requirements that all books and records be maintained in their original form (for paper) and their native file format (for electronic records); whether the retention period for any communication medium (e.g. oral communications) should be shorter than the retention period applicable to other required records and; the potential costs and effects of requiring registrants to record and maintain oral communications.

§ 1.31(a)(1) refers to books and records; keeping and inspection,[1] and states that: "All books and records required to be kept by the Act or by these regulations shall be kept in their original form (for paper records) or native file format (for electronic records) for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period". I would recommend that all such records should be required to be kept indefinitely rather than for the general five years proposed here. Relevant original documents should be scanned after two years. There is certainly no technological or practical reason for limiting the retention period, and it would be useful to keep this information for future investigative and analytical purposes.

§ 1.35(a) refers to records of commodity interest and cash commodity transactions required to be retained under §1.31, and which must include "all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of transactions". I support this requirement, and suggest that oral records should be required to be kept indefinitely. As above, there is no technological or practical reason for limiting the retention period, and it would be useful to keep this information for future investigative and analytical purposes.[2]

Bona fide hedging transactions

Proposed § 1.3(z) covers the definition of bona fide hedging transactions and positions. In general I agree with § 1.3(z)(1)(i) that such transactions or positions must be economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise. For clarity and completeness I would recommend that you add wording under § 1.3(z) to specify that such transactions or positions are "not held for a purpose that is in the nature of speculation or trading" and that they are "not held to hedge or mitigate the risk of another position, unless that other position itself is held for the purpose of reducing risk".

The decision as to whether such transactions and positions are classified as bona fide hedging transactions and positions should be made at the time the transaction or position is entered into, considering the circumstance existing at that time, and taking into account management's general hedging and risk mitigation strategies.

[1] These proposed rules contain various cross-references from here to §§ 1.20, 1.26, 1.34, 1.35, 1.36, 1.57, 41.2 and Appendix B to Part 36.
[2] This is a serious issue. For example IOSCO recommends to: "consider enhancing record keeping requirements i.e. telephone recording and record retention periods, which could benefit enforcement investigations". See IOSCO/MR/03/2009, "IOSCO publishes recommendations to enhance commodity futures markets oversight", http://www.iosco.org/news/pdf/IOSCONEWS137.pdf.

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Yours sincerely

Chris Barnard