submissions provided to either Agency in any electronic form or on paper will be published on the Web site of the respective Agency, without review and without removal of personally identifying information. Please submit only information that you wish to make public.

By the Commodity Futures Trading Commission.
Dated: July 21, 2011.

David A. Stawick, Secretary.
By the Securities and Exchange Commission.
Dated: July 21, 2011.

Elizabeth M. Murphy, Secretary.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

SEcurities and Exchange COMMISSION

17 CFR Chapter II

[Release No. 34–64926; File No. 4–635]
Acceptance of Public Submissions for a Study on International Swap Regulation Mandated by Section 719(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCY: Commodity Futures Trading Commission; Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: Section 719(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) to jointly study and then report to Congress on swap regulation and clearinghouse regulation in the United States, Asia, and Europe and to identify areas of regulation that are similar and other areas of regulation that could be harmonized. The report also must identify major dealers, exchanges, clearinghouses, clearing members, and regulators in each geographic area and describe the major contracts (including trading volumes, clearing volumes, and notional values), methods for clearing swaps, and the systems used for setting margin in each geographic area. In connection with the study and report, the CFTC and SEC are issuing this request for information through public comment.

DATES: Submit comments on or before September 26, 2011.

ADDRESSES: You may submit comments by any of the following methods:

CFTC
• Agency Web site, via its Comments Online process at http://comments.cftc.gov. Follow the instructions for submitting comments through the Web site.
• Mail: David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

• Hand Delivery/Courier: Same as mail above.

Please submit comments using only one method. Comments should be identified by “International Swap Regulation Study” in the subject line of responses submitted electronically and in paper submissions.

All comments must be submitted in English or, if not, accompanied by an English translation. Comments will be posted on the CFTC’s Internet Web site at http://www.cftc.gov, without review and without removal of personally identifying information. You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that may be exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in §145.9 of the Commission’s regulations. The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from http://www.cftc.gov that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments will be retained in the public comment file and may be accessible under FOIA.

SEC

Electronic Comments
• Use the agency’s Internet comment form at http://www.sec.gov/rules/other.shtml; or
• Send an e-mail to rule-comments@sec.gov. Please include File Number 4–635 on the subject line.

Paper Comments
• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1000.

All submissions should refer to File Number 4–635. This file number should be included on the subject line if e-mail is used. To help the SEC process and review your comments more efficiently, please use only one method. Comments will be posted on the SEC’s Internet Web site at http://www.sec.gov. Comments also are available for Web site viewing and printing in the SEC’s Public Reference Room, Station Place, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the SEC does not edit personally identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act was enacted on July 21, 2010. Title VII of the legislation amends the Commodity Exchange Act and the Securities Exchange Act of 1934 to establish a comprehensive new regulatory framework for swaps and security-based swaps to reduce risk, increase transparency, and promote market integrity within the financial system. Among other things, Title VII: (1) Provides for the registration and comprehensive regulation of swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants; (2) imposes clearing and trade execution
requirements on swaps and security-based swaps, subject to certain exceptions; (3) creates rigorous recordkeeping and real-time reporting regimes; and (4) enhances the Commissions’ rulemaking and enforcement authorities with respect to certain registered entities and intermediaries subject to the Commissions’ oversight.

Section 719(c)(1) of the Dodd-Frank Act requires the CFTC and SEC jointly to conduct a study on swap regulation and clearinghouse regulation in the United States, Asia, and Europe and to identify areas of regulation that are similar and other areas of regulation that could be harmonized. Pursuant to Section 719(c)(2) of the Dodd-Frank Act, the Commissions must submit a report to Congress within 18 months after the Dodd-Frank Act’s enactment (i.e., on or before Monday, January 23, 2012) that describes the results of the study and includes: (1) The identification of the major dealers, exchanges, clearinghouses, and regulators in each geographic area; (2) lists of the major swap contracts (including trading volumes, clearing volumes, and notional values) in each geographic area; and (3) a description of the methods for clearing swaps and the systems used for setting margin in each geographic area. The Commissions also are mindful of differences in regulatory development across jurisdictions. In the United States and under the Dodd-Frank Act, many of the required regulations with regard to swaps already have been proposed and made available for public comment. Other jurisdictions, however, are proceeding under different time frames. For example, the Japanese Ministry of the Financial Instruments and Exchange Act by adopting legislation on over-the-counter (OTC) derivatives on July 10, 2009, and on May 12, 2010. These amendments are expected to be implemented by November 2012. The European Commission (EC), in turn, proposed legislation on clearing and trade repositories on September 15, 2010. This proposed legislation calls for the European Securities and Markets Authority to propose technical standards by June 30, 2012.

In order to strike a balance between meeting the statutory deadline for the study and report and providing timely information to Congress, the Commissions have determined to publish the request at this time and to provide for a 60-day comment period. The pace of regulatory developments in the regulation of OTC derivatives in the United States and in other jurisdictions, the Commissions plan to conduct the study based upon information received and collected by the last day of the comment period. Comments should be submitted during the open comment period, but staff may consider comments filed after the deadline and may consult with interested and/or relevant parties after the comment period closes in order to obtain additional or clarifying information. The Commissions welcome public comment on all aspects of the study.

The Commissions have developed the following requests for comment to gather information in support of the study mandated by Section 719(c) and request that commenters include a description, either in English or accompanied by an English translation, of the underlying source material used in composing each submitted response. Commenters may also provide any additional relevant information beyond that specifically requested. Because
Section 719(c) requires the Commissions to prepare a report relating to the swap markets of the United States, Asia, and Europe, commenters are specifically asked to provide information about markets in those jurisdictions. Commenters also may provide any relevant information on other jurisdictions. If regulatory requirements in a jurisdiction are under consideration but not yet enacted or effective, commenters should make note of this in their answer and provide as much relevant information as possible on recent and anticipated developments.

While all commenters are welcome to respond to the items below in their entirety, in order to provide more focus, the requests for comment have been divided into three groups. The first group, items A–E, inquires about information to which foreign regulators may have the most efficient access. Item F, by contrast, inquires about information that may be available to a wider range of commenters, while item G inquires about information that exchanges and clearinghouses might be uniquely positioned to provide.

A. Status of Regulation

1. For each jurisdiction on which comment is being provided, please provide the name of the jurisdiction being commented upon.

2. Does the jurisdiction have a legal definition of the term “swap”, “security-based swap”, or other similar term or terms (hereinafter referred to as a “Swap” or “Swaps”)? If so, please provide such definition(s).15

3. Are Swaps included within the scope of any statute, regulation, or other legal requirement in the jurisdiction?

a. If not, is the jurisdiction planning to or considering whether to regulate, or to modify regulation of, Swaps?

b. Please further describe the present status of regulatory efforts and the anticipated timeline for such efforts.

4. What type of counterparty may enter into a Swap? Do any limitations apply?

5. Are certain types or classes of Swaps prohibited, or are certain entities prohibited from entering into certain types or classes of Swaps?

6. If Swaps are regulated:

a. Who determines which instruments, transactions, or agreements should be regulated as Swaps?

b. Which Swaps, if any, are required to be executed on an organized market, on an electronic execution facility, or on any other type of market?

c. Which Swaps, if any, are required to be cleared by a central counterparty and, for those required to be cleared, how are the trades of non-clearing participants cleared?16

d. Which Swap transactions, if any, are required to be reported to a data repository or other entity, the public, or regulatory authorities?

e. Is regulatory oversight of the Swap market conducted by one single regulatory authority or divided among different regulatory authorities? If the latter, please identify each relevant regulatory authority and describe its responsibilities and jurisdiction.

f. How does the regulatory framework regulate potential systemic risk created by Swaps? Does it, for example, create a new oversight body or designate certain entities as systemically important?

g. Does the regulatory authority, or regulatory authorities if more than one regulator has oversight responsibilities over the Swap market, have the ability to share information related to Swaps with domestic and foreign regulatory authorities?17

h. How are cross-border Swap transactions regulated? Does the Swap regulatory framework apply to persons located outside of the jurisdiction doing business with persons located within the jurisdiction, and, more generally, to cross-border Swap activities?

i. What enforcement authority exists over Swaps, and who may exercise such authority?

B. Regulatory Requirements for Market Participants

1. How does the regulatory framework address participants in the Swap market? What are the registration or licensing requirements for Swap-related dealers, market participants, intermediaries, or others (individually and collectively, “Participants”)?

2. Are any types of Participants in the Swap market excluded or exempted from Swap-related registration or licensing requirements?

3. What is the process for updating, withdrawing, or terminating Swap-related registration or an exemption from Swap-related registration?

4. What are the Swap-related prudential regulatory requirements (e.g., capital, liquidity, margin, risk management, segregation, collateral)?

5. What are the requirements related to insolvency or bankruptcy in regard to Participants?

6. What are the Swap-related business conduct requirements (e.g., interaction with counterparties, disclosure, supervision, reporting, recordkeeping, documentation, confirmation, valuation, conflicts of interest, avoidance of fraud and other abusive practices)?

7. Do Participants have the ability to share information with domestic and/or foreign regulatory authorities?

8. How are foreign Participants treated (e.g., a special recognition category, an exclusion or an exemption from registration)?

C. Regulatory Requirements for Organized Markets, Electronic Execution Facilities, and Other Types of Markets

1. Does the regulatory framework include requirements for organized markets, electronic execution facilities, and/or other types of markets for Swaps (hereinafter referred to as “Markets”)?

2. What are the registration or licensing requirements for such Markets?

3. Are any Markets excluded or exempted from such registration or licensing requirements?

4. What is the process for updating, withdrawing, or terminating such registration or exempting from such registration?

5. What are the ongoing regulatory responsibilities of such Markets (e.g., access, surveillance, transparency, compliance, recordkeeping)?

6. Do Markets have the ability to share information with domestic and/or foreign regulatory authorities?

7. How are foreign Markets treated (e.g., a special recognition category, an exclusion or an exemption from registration)?

D. Regulatory Requirements for Central Counterparties

1. Does the regulatory framework include requirements for central counterparties that provide clearing and settlement services for Swaps?

2. What are the registration or licensing requirements for such central counterparties?

3. Who is excluded or exempted from such registration or licensing requirements?

4. What is the process for updating, withdrawing, or terminating such registration or exempting from such registration?

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15 These terms may include, but may not be limited to, OTC derivatives. The Dodd-Frank Act includes definitions of the terms “swap” and “security-based swap”.

16 If applicable, how does the mandatory clearing requirement work, e.g., who decides which Swaps are required to be cleared, what criteria are applied, does the requirement apply to existing Swaps or to those entered into at a certain point in time, are any entities exempt from the clearing requirement?

17 In particular, are there any legal or other barriers to the collection of information or to the sharing of information, e.g., client confidentiality protection or data privacy safeguards?
5. What are the ongoing regulatory responsibilities of such central counterparties (e.g., financial resources, risk management, safeguards against member or participant default, authority in the event of a default, recordkeeping)?

6. Do such central counterparties have the ability to share information with domestic and/or foreign regulatory authorities?

7. How are foreign central counterparties treated (e.g., a special recognition category, an exclusion or an exemption from registration)?

E. Regulatory Requirements for Data Repositories

1. Does the regulatory framework include requirements for data repositories for Swaps?

2. What are the registration or licensing requirements for such data repositories?

3. Who is excluded or exempted from such registration or licensing requirements?

4. What is the process for updating, withdrawing, or terminating such registration or exempting from such registration?

5. What are the ongoing regulatory responsibilities of such data repositories (e.g., timing of reporting to the public, recordkeeping)?

6. Are such data repositories required to use a specified data standard when they provide data to regulatory authorities and, if so, what standard is required?

7. Do such data repositories have the ability to share information with domestic and/or foreign regulatory authorities?

8. How are foreign data repositories treated (e.g., a special recognition category, an exclusion or an exemption from registration)?

9. What are the regulatory requirements in connection with data reporting for entities participating in the Swap market, such as counterparties or Participants (e.g., maintaining records, reporting data to a repository, real-time reporting to the public, providing information to domestic and foreign regulatory authorities)?

F. Regulatory Comparison

1. Across jurisdictions, for any or all items listed above, which areas of regulation are similar and which areas are different?

2. In viewing the existing laws, institutions, and enforcement mechanisms of each respective jurisdiction as a whole, are such similarities and differences appropriate and desirable for regulatory purposes, or do certain aspects of a particular jurisdiction’s Swap market warrant a different regulatory approach?

3. What are the potential costs and benefits (in terms of investor protection, market efficiency, competition, or other factors) that may arise from further consistency/harmonization of regulations across borders?

4. How should consistency in regulation across jurisdictions be measured and are there factors other than the harmonized text of a regulation that should be taken into consideration when assessing the degree to which cross-border regulatory harmonization has been implemented in practice?

5. Assuming that a theoretically “optimal” set of regulations for a particular jurisdiction might take into consideration elements unique to a specific market in ways that might make cross-border regulatory alignment difficult, to what extent do the benefits of greater regulatory harmonization across borders outweigh the costs associated with having regulations that might be less tailored to a particular market’s circumstances? In what areas do you believe the benefits of harmonization most outweigh any potential downsides?

6. In the United States, what steps should or could be taken to better harmonize statutory requirements under the Dodd-Frank Act with statutory requirements implemented in other jurisdictions?

7. In the United States, what steps could be taken to harmonize CFTC or SEC regulations with regulations promulgated by authorities in other jurisdictions?

G. Swap Market Information

1. Please identify major organized markets and electronic execution facilities (and the Swaps-related regulator(s) for each) for the trading of Swaps.

   a. For each market or facility, please provide a listing and description of the major contract classes and subclasses, such as credit default swaps (CDS),18 equity swaps, currency swaps, interest rate swaps (IRS),21 and commodity swaps;

   b. For classes and subclasses of contracts identified in paragraph a above, please provide:

      i. The trading volumes in 2009, 2010, and year-to-date; and

      ii. The outstanding notional values at year-end 2008, 2009, 2010, and the most recent available.

2. Please identify major dealers participating in Swap markets (and the Swap-related regulator(s) for each).

3. Please identify major central counterparties (and the Swap-related regulator(s) for each) for the clearing of Swaps.

   a. For each central counterparty, please provide a listing and description of the major classes and subclasses of cleared Swap contracts, such as CDS, equity swaps, currency swaps, IRS, and commodity swaps;

   b. For classes and subclasses of contracts identified in paragraph a above, please provide:

      i. The clearing volumes for 2009, 2010, and year-to-date; and

      ii. The outstanding notional values at year-end 2008, 2009, 2010, and the most recent available;

   c. For each central counterparty, please provide:

      i. A description of the method used to clear Swaps;

      ii. A description of the systems used to establish margin on individual Swaps and on Swap portfolios; and

      iii. The name of each major clearing member of the central counterparty (and the Swap-related regulator(s) for each).

Issued in Washington, DC, on July 20, 2011, by the Commodity Futures Trading Commission.

David A. Stawick,
Secretary.

Issued in Washington, DC, on July 20, 2011, by the Securities and Exchange Commission.

Elizabeth M. Murphy,
Secretary.

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18 The Recommendations for Central Counterparties were published in November 2004 (and currently are being revised) by the Committee on Payment & Settlement Systems of the Bank for International Settlements and the Technical Committee of IOSCO. Links to this standard, as well as related standards and the consultative report for revising them, are available at http://www.bis.org/publ/cpsx04.htm.

19 If entities other than data repositories can fulfill this function, please describe the jurisdiction’s requirements for such activity and provide the relevant information for each question on this topic.

20 In particular, please identify any potential opportunities for regulatory arbitrage or impediments to the achievement of consistent regulatory standards across jurisdictions.

21 For CDS, include: corporate single name, sovereign single name, multi-name, index; CDS on domestic and non-domestic reference assets (classified by country, in the latter case); and CDS between domestic and non-domestic participants (classified by country, in the latter case).

22 For IRS, include: underlying currency, structure, and maturity.