TO: CPSS Secretariat (cpss@bis.org)
IOSCO Secretariat (OTC-Data-Report@iosco.org)
FROM: Ted McCullough, Chatham Financial
DATE: September 23, 2011
RE: Comments on the "Report on OTC derivatives data reporting and aggregation requirements"

Chatham Financial Corp. ("Chatham") is pleased to respond to the request for comments by Committee on Payment and Settlement Systems ("CPSS") and the International Organization of Securities Commissions ("IOSCO") regarding its "Report on OTC derivatives data reporting and aggregation requirements" ("Data Report").

Chatham is a consulting company that works with over one thousand companies from virtually all business sectors that employ over-the-counter ("OTC") derivatives to manage risks they face in connection with their day-to-day businesses. Chatham serves clients across the globe through offices in the United States, Europe and Asia. Chatham assists its clients with all facets of the hedging process, from hedge strategy, to structuring and executing hedges, assisting with documentation and providing on-going valuations, reporting and accounting support. Throughout the policy debate over regulation of the OTC derivatives market, Chatham has advocated for regulation that effectively mitigates systemic risk and increases transparency without unduly burdening businesses that utilize derivatives to manage risk.

Chatham serves clients that are both financial and non-financial in nature. Our clients include property companies, regional and community banks, state pension funds, private equity firms, professional sports teams, healthcare providers, retailers, technology providers, government agencies, energy producers and end users from many other sectors of the economy. Though these institutions are different in many ways, they share two important distinctions: (1) their derivatives use does not contribute to systemic risk and (2) they use derivatives exclusively to hedge commercial risk.

Chatham appreciates the efforts of IOSCO and CPSS (collectively, "the Task Force") to recommend uniform standards for data reporting and aggregation, and believes that common standards will increase the utility of swaps information for regulators while also reducing the reporting burden for market participants. In addition to these important outcomes, we believe it important that the Task Force promotes standards that limit reporting burdens on those that did not contribute to the financial crisis, do not contribute to systemic risk, and have more limited resources for investment in systems to facilitate reporting. The recommendations that follow are oriented toward this objective.

Differentiated Reporting Requirements for End Users

For any entity required to report, significant technology and people resources could be required to satisfy reporting requirements. In the United States, the Dodd-Frank Act places most of the reporting obligations on swap dealers and major swap participants. As such, in many cases end

users will not have reporting responsibility. However, there are situations in which end users will bear the reporting burden. Examples of such situations are as follows:

- **Small banks** that provide risk management products (including interest rate swaps and FX forward contracts) to their commercial customers will be required to report such transactions. This is true despite their exclusion from the definition of "swap dealer."
- **Financial & non-financial end users** that centralize risk management in a centralized treasury center will likely need to report swaps between commonly controlled affiliates.
- **Financial & non-financial end users** transacting with foreign banks will be responsible for reporting such trades.

Because end users will need to report certain trades and will be unable to rely on their swap dealer counterparties' reporting infrastructure, we urge the Task Force to consider approaches that minimize the burden placed on these companies.

Data from Master Agreements

The Data Report recommends terms from master agreements, netting agreements and collateral agreements should be reported to trade repositories.[1] While we appreciate the need for select and specific information to assess systemic risk, our experience suggests that extracting such data will come at a significant cost.

Since the ISDA agreements and Credit Support Annexes are highly negotiated legal documents, extracting information from them is a highly manual process. Provisions within these documents are customized to the unique credit relationship between parties. For example, borrowers may negotiate to ensure that default provisions within their ISDA agreements exactly mirror similar provisions in their debt agreements. Because the underlying debt agreements may be highly negotiated and customized, it follows that the derivatives documentation mirroring the default provisions related thereto would also be highly negotiated and customized. Such customization is important because it reduces legal risk for end users. For example, its lender may be precluded from declaring default on a swap agreement before it does so on the underlying loan agreement. This is especially important when the lender and swap provider are different parties.

Further, similar legal concepts (e.g., cross default) are often worded differently across agreements, affording institutions the opportunity to reflect their prior experience within their documents. As such, though provisions such as cross default may apply to a given end user in each of its ISDA agreements, each cross default provision may differ in wording.

The effort to extract and interpret the product of such customization consistently and accurately would be time consuming, costly, and likely prone to error. As such, the Task Force should weigh the trade-offs between requirements to gather certain data elements and the benefits available from such data. For example, though the Task Force may deem it valuable to require

[1] Page 2 of the "Report on OTC derivatives data reporting and aggregation requirements": "*The Task Force found that certain information, as that contained in master agreements and credit support annexes, will be helpful for assessing systemic risk and financial stability but that presently such information is not supported by TRs.*"

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reporting of some data elements within the ISDA agreement (e.g., guarantors to that agreement), it should not follow that all data elements within the ISDA agreement should be reported (e.g., cross default provisions, tax treaty information, negotiated termination events, etc.). At a minimum, the Task Force should consider the merits and associated costs of each data element to be reported.

Further, any requirement to report master agreement information should be prospective, rather than retroactive. The retroactive extraction of data elements from pre-existing ISDAs and CSAs would present a cost and burden that end users did not expect when initially entering into such agreements. The benefits available to regulators in having access to such information – especially as it relates to end user transactions – would not be materially diminished through prospective application of such requirements.

Legal Entity Identifiers

The Data Report recommends the development and implementation of an international system of Legal Entity Identifiers ("LEIs") to enable aggregation of OTC derivative data. The Data Report acknowledges various technical and operational challenges and we urge those developing and implementing LEIs to also address the logistical challenges end users may encounter.

As part of the Dodd-Frank Act in the United States, end users will be required to obtain Unique Counterparty Identifiers (UCI), which we believe is the same concept as LEIs, as described in the Commodity Future Trading Commission rule for Swap Data Recordkeeping and Reporting.[2] Moreover, end users must obtain the Unique Counterparty Identifier within a timeframe (which is not yet finalized) in order to report its transactions to a trade repository. In turn, it must report its transactions to a trade repository in order for pre-existing swap transactions to be exempt from clearing. As such, to the extent a party fails to undertake a relatively benign administrative activity (e.g., obtaining a LEI or UCI), it could find itself subject to a fairly substantial economic consequence (e.g., clearing requirement to pre-existing transactions).

Although frequent users of derivatives may have ready access to LEI-related requirements, infrequent users of derivatives may have limited access to such information or may be unable to interpret the importance of carrying out such requirements. Thousands of companies across the United States that use derivatives to manage risk and wish to utilize the clearing exemption will need to first be aware of the need to obtain an entity identifier, take the steps to obtain the identifier, and then reasonably track and manage the identifier for purposes related to reporting. Therefore, an entity identifier system would require broad communication efforts to all end users, permit sufficient time to comply, be reasonably easy to access, and incur little to no additional costs.

[2] Page 76602 Federal Register / Vol. 75, No. 235:
http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2010-30476a.pdf

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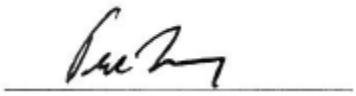
Summary

It is important that derivatives regulatory requirements appropriately differentiate between those that contribute to systemic risk and those that do not. Reporting requirements should carefully contemplate the costs and burdens applicable to end users and the relative benefits of requirements imposed thereon. Specifically, such requirements should be lower when end users are responsible for reporting and requirements to extract information from ISDAs and CSAs should be limited and prospective. Requirements pertaining to unique counterparty identifiers should be broadly communicated and incur minimum burden on end users.

We appreciate the Task Force's consideration of these important issues.

Sincerely,



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