

October 12, 2018

Mr. Christopher Kirkpatrick,
Secretary of the Commission,
Commodity Futures Trading Commission,
Three Lafayette Centre
1155 21st Street NW,
Washington, DC 20581

SUBMITTED VIA CFTC COMMENTS PORTAL: <https://comments.cftc.gov>

RE: Rule 50.50 End-User Notification of Non-Cleared Swap; Agency Information Collection: Notice of Intent to Extend Collection 3038-0085; OMB Control No. 3038-0085

Dear Mr. Kirkpatrick:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the Commodity Futures Trading Commission's (Commission) Notice of Intent to Extend Collection (Notice), by which it proposes to renew its collection of certain information.

As the Commission states in the notice, Commission Regulation 50.50² specifies the requirements for eligible end-users who elect the end-user exception from the Commission's swap clearing requirement,³ as provided under section 2(h)(7) of the Commodity Exchange Act (CEA). The regulation requires the counterparties to a swap transaction to report certain information to a swap data repository registered with the Commission, or to the Commission directly, if one or more counterparties elects the end-user exception. The Commission states that such reporting is necessary in order for Commission staff to prevent abuse of the end-user exception.

With respect to the collection of information, the Commission invites comments on—

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

¹ The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits, and extend nearly \$10 trillion in loans.

² 17 C.F.R. § 50.50.

³ The Commission's swaps clearing requirement is prescribed in Regulation 50.2, 17 C.F.R. § 50.2, and Regulation 50.4, 17 C.F.R. § 50.4.

- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

The Commission should amend Regulation 50.50(b)(2)⁴

ABA takes this opportunity to urge the Commission to amend Regulation 50.50(b)(2). This subsection of the regulation requires any entity that qualifies for an exception to the Commission's swaps clearing requirement to report the information listed in Regulation 50.50(b)(1)⁵ annually in anticipation of electing exceptions to the swaps clearing requirement. Such reporting has to be done in accordance with the provisions of Regulation 45.8⁶ to a Commission-registered swaps data repository (SDR), or to the Commission if no SDR is available to receive the reporting.⁷ Any such reporting is effective for 365 days following the date of such reporting.⁸

Some of ABA's member banks qualify for and take advantage of the so-called "small bank exemption" from the Commission's swaps clearing requirement pursuant to the provisions of Regulation 50.50(d).⁹ As part of their commercial loan business, these banks enter into swaps to hedge loans extended to their commercial end-user clients. These swaps are not cleared, since the clients are not financial entities and may take advantage of the exception to the swaps clearing requirement pursuant to Regulation 50.50(a).¹⁰ The general duration of these swaps is typically 5 to 10 years, and most commercial end-user clients do not change their election of the end user exemption during the life of the swap.

Pursuant to the reporting hierarchy established in Regulation 45.8, it is our member banks that are the reporting counterparty for the purposes of the reporting requirement prescribed in Regulation 50.50(b)(1). It has been the experience of our member banks that because of the annual reporting requirement, they report the exact same information each year.

This activity is costly, inefficient, and redundant. The Commission could achieve its objective with less cost through a requirement to make an initial report, and a further report only if there has been a material change in circumstances. We urge the Commission to amend the rule accordingly.

⁴ 17 C.F.R. § 50.50(b)(2).

⁵ 17 C.F.R. § 50.50(b)(1).

⁶ 17 C.F.R. § 45.8.

⁷ See Regulation 50.50(b)(1); 17 C.F.R. § 50.50(b)(1).

⁸ See Regulation 50.50(b)(2); 17 C.F.R. § 50.50(b)(2).

⁹ 17 C.F.R. § 50.50(d).

¹⁰ 17 C.F.R. § 50.50(a).

We understand that the Commission is required first to issue a notice of proposed rulemaking to effect the amendments that we propose, and we respectfully request that the Commission do so.

Thank you for the opportunity to respond to the Commission's request for comments. Please do not hesitate to contact the undersigned at 202-663-5037 or anandar@aba.com if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Ananda Radhakrishnan', with a stylized, sweeping flourish extending to the right.

Ananda Radhakrishnan
Vice President
Center for Bank Derivatives Policy

cc: The Honorable J. Christopher Giancarlo, Chairman
The Honorable Brian D. Quintenz, Commissioner
The Honorable Rostin Behnam, Commissioner
The Honorable Dawn DeBerry Stump, Commissioner
The Honorable Dan M. Berkovitz, Commissioner
Melissa D'Arcy, Special Counsel, Division of Clearing and Risk,