

Coalition for Derivatives End-Users

June 9, 2011

Mr. David A. Stawick
Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Via agency website

Re: Comment on Proposed Rule “Swap Data Recordkeeping and Reporting Requirements: Pre-enactment and Transition Swaps”; 76 Fed. Reg. 22833 (Apr. 25, 2011)

The Coalition for Derivatives End-Users (the “Coalition”) is pleased to respond to the request for comments by the U.S. Commodity Futures Trading Commission (the “Commission”) regarding its proposed rule under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) entitled “Swap Data Recordkeeping and Reporting Requirements: Pre-enactment and Transition Swaps.” We are glad to work with the Commission to ensure that the interpretive order reflects legislative intent, while also limiting unnecessary restrictions that may impede the ability for end-users to efficiently and effectively manage their risks.

The Coalition represents companies that employ derivatives predominantly to manage risks. Hundreds of companies have been active in the Coalition throughout the legislative and regulatory process, and our message is straightforward: The Coalition seeks to ensure that financial regulatory reform measures promote economic stability and transparency without imposing undue burdens on derivatives end-users. Imposing unnecessary regulation on derivatives end-users, who did not contribute to the financial crisis, would create more economic instability, restrict job growth, decrease productive investment, and hamper U.S. competitiveness in the global economy.

Introduction

The Coalition appreciates the Commission’s effort to minimize unnecessary burdens on end-users in final and proposed rulemaking to implement the Dodd-Frank Act, as end-users did not cause the financial crisis nor pose systemic risk. Although we understand the need to report pre-enactment and transition swaps, there are aspects of the proposed rule that will result in unnecessary burdens to end-users. Our concerns are primarily related to the logistical challenges associated with the timing and data requirements, which may prove to be disproportionately challenging for end users.

Phased Implementation is Necessary for End-Users

In commentary to the proposed rule, the Commission states: “The Commission believes that the purposes of the Dodd-Frank Act can be best served by establishing a **single date** for the

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commencement of all swap data reporting pursuant to that Act.”¹ This raises significant concern in situations in which an end-user may be the reporting party under the proposed rules.

Generally, end-users will not be the reporting party as they face swap dealers (“SDs”) and we continue to urge the Commission to minimize the situations in which an end-user is the reporting party. While the number of end-users affected may be low, it will be difficult for these end-users to begin swap data reporting within the same timeframe as market participants that possess significantly more resources, systems, and manpower devoted to this regulatory requirement. As such, it is essential to allow such end-users additional time to comply beyond the date required for SDs and major swap participants (“MSPs”) to be compliant.

We anticipate that end-users would need, at a minimum, nine to twelve months after all rules promulgated under Title VII of the Dodd-Frank Act are issued to practically comply with swap data recordkeeping and reporting requirements. End-users would need to work with vendors, consider additional resource and technological enhancements, and create new reporting processes in order to implement the proposed rules. If the compliance date is more than one year after the final rule is adopted, end-users likely would have sufficient time to comply, provided that market utilities, such as swap data repositories and trade affirmation and confirmation systems, are readily available in the market and such utilities make access to their services as cost-effective and as logistically and technologically practicable as possible.

Reporting Party when U.S. End-User Faces a Non-U.S. Entity

The proposed rule states that, “*if only one counterparty to a pre-enactment swap or transition swap is a U.S. person, that counterparty shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.*”² This provision is reasonable when a foreign SD/MSP faces a U.S.-based SD/MSP or when a foreign non-SD/MSP faces a U.S.-based non-SD/MSP.

However, under the proposed rule, in situations where a U.S.-based non-SD/MSP faces a foreign SD/MSP, the U.S.-based non-SD/MSP would be required to report, notwithstanding the fact that the foreign SD/MSP has the easiest, fastest and cheapest access to the data required to be reported. A similar provision raised concern in the proposed rules for Swap Data Recordkeeping and Reporting,³ as noted in the Coalition’s letter⁴ and also raises concern here as well.

¹ 76 Fed. Reg. 22833, 22837 (Apr. 25, 2011) (emphasis added).

² 76 Fed. Reg. 22833, 22845 (Apr. 25, 2011).

³ 75 Fed. Reg. 76574 (Dec. 8, 2010).

⁴ See the Coalition’s comment letter filed under 17 CFR Part 45 Swap Data Recordkeeping and Reporting Requirements, *available at*: <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=30949&SearchText=>

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We request clarification that if a U.S.-based non-SD/MSP faces a foreign SD/MSP that has an office in the U.S., the foreign SD/MSP shall be the reporting party. Additionally, we request clarification that if a U.S.-based non-SD/MSP faces a U.S.-based SD/MSP that is the subsidiary of a foreign entity, that SD/MSP shall be the reporting party. These requirements would minimize burdens on end-users whose derivatives activities do not pose systemic risk and require the party most capable of meeting reporting requirements to bear that responsibility.

Obtaining a Unique Counterparty Identifier

The proposed rules require the reporting party to obtain a Unique Counterparty Identifier (“UCI”) by the compliance date; whereas the non-reporting party has 180 days after the compliance date to obtain their UCI.⁵ The potential logistical traffic jam of entities seeking to obtain UCIs could make this process very cumbersome and possibly time consuming, especially since the process for obtaining a UCI is not yet established. Therefore, without knowing the process and possible time constraints, it’s unclear whether 180 days will be sufficient to comply with these requirements. We request the Commission clarify the process for obtaining a UCI before finalizing the time frame within which reporting and non-reporting parties are required to comply.

Additionally, many end-users may not have resources dedicated to monitoring these rules and may not be aware of the need for a UCI. Although this would not justify any lack of compliance, it may take time for reporting parties to remind their counterparties to comply with UCI registration and to provide the UCI to the reporting party. The practical component of awareness and communication, combined with thousands of end-users in the market needing to obtain UCIs, suggests that the sheer logistical challenge would require between one to two years to implement this proposed system. If the Commission already is accounting for this logistical timing challenge in determining the compliance date, we welcome that approach. If not, we urge the Commission to allow end-users at least eighteen months after the final rule is adopted to comply.

Master Agreement Identifier

The proposed rules require a reporting party to include the Master Agreement Identifier. Typically, Master Agreements do not have a single unique identifier agreed to by both parties. Instead, the components of a unique Master Agreement identifier include the names of the parties involved, the “as of” date, and the scope of the agreement, including the presence (or absence) of credit support documentation. Each party may establish a unique identifier for that relationship in its own system or may establish a unique identifier for the particular document. Additionally, it is important to note that most end-users do not have systems to track and establish such identifiers for this purpose.

⁵ 76 Fed. Reg. 22833, 22845 (Apr. 25, 2011).

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We would also like to raise issue with the need to collect a Master Agreement Identifier, as the need for this data is not evident. We request the Commission to explain how such identifier would be used practically so that participants may better understand the value of tracking and reporting this additional data. From the perspective of tracking systemic risk, the establishment of UCIs would be sufficient to determine the net exposure between the two parties. Without a clear understanding of the need for this identifier, it would be concerning if additional requirements are placed on end-users, either directly as the reporting party or indirectly as a non-reporting party.

As noted in our comment letter on Swap Data Recordkeeping and Reporting,⁶ we urge the Commission to not move beyond the statutory requirements of the Dodd-Frank Act and seek to capture more data than is necessary. While it may be interesting to track Master Agreement Identifiers and the contents of these agreements, the logistical burden and tremendous cost of extracting this information, does not have a clear benefit that the Commission would be able to utilize.

Conclusion

We thank the Commission for the opportunity to comment on these important issues. The Coalition looks forward to working with the Commission to help implement rules that serve to strengthen the derivatives market without unduly burdening business end-users and the economy at large. We are available to meet with the Commission to discuss these issues in more detail.

Sincerely,

Business Roundtable
Commodity Markets Council
National Association of Corporate Treasurers
National Association of Real Estate Investment Trusts
The Real Estate Roundtable
U.S. Chamber of Commerce

⁶ See the Coalition's comment letter filed under 17 CFR Part 45 Swap Data Recordkeeping and Reporting Requirements, *available at*:
<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=30949&SearchText=>