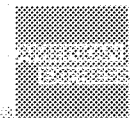
From: David Carroll <david.carroll@aexp.com>
Sent: Monday, September 20, 2010 4:43 PM
To: dfadefinitions <dfadefinitions@CFTC.gov>
Subject: Definitions
Attach: Comments letter 9-20-10.pdf



American Express Company
General Counsel's Office
200 Vesey Street
New York, NY 10285

September 20, 2010

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NW
Washington, DC 20549-1090

Mr. David A. Stawick
Secretary
Commodity Futures Trading
Commission
1155 21st Street, N.W.
Washington, DC 20581

Re: Advanced Notice of Proposed Rulemaking
Definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act, RIN 3235-AK65; 3038-AD06, SEC File No. S7-16-10

Dear Ms. Murphy and Mr. Stawick;

American Express Company for itself and its subsidiaries appreciates this opportunity to submit comments in response to the Advanced Notice of Proposed Rulemaking issued by the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC") (and collectively hereinafter referred to as the "Commissions") regarding Definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act, 75 Fed. Reg. 51429 (August 20, 2010) (the "ANPR"). American Express respectfully submits the following comments concerning the definitions of "major swap participant" and "swap dealer".

Major Swap Participant

Section 721(a)(16) of the Dodd-Frank Act defines the term "major swap participant" as any person who is not a swap dealer

(i) who maintains a substantial position in swaps for any of the major swap categories excluding "positions held for hedging or mitigating commercial risk" or

(ii) whose outstanding swaps create "substantial counterparty exposure that could have serious adverse affects on the financial stability of the United States banking system or financial markets" or

(iii) who is a "financial entity that is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency" and maintains a substantial position in outstanding swaps in any major swap category.

We respectfully request that the Commissions consider clarifying the terms of the three alternative categories in the definition of "major swap participant" in the rulemaking process to make clear that entities that enter into swaps in connection with limiting the commercial risks of their businesses, and not for speculative purposes, should not be deemed to be major swap participants.

We suggest this could be accomplished by making clear that the exclusion in paragraph (A)(i)(I) of the definition for "positions held for hedging or mitigating commercial risk" would include positions for hedging or mitigating risk from interest rate and foreign currency exposures directly related to the non-swap business activities of the person. In this context, we believe commercial risk should be broadly defined to include the non-swap activities of the person. We believe such an interpretation is consistent with the intent of the Dodd-Frank Act to regulate only those swap participants whose swap activities are not related to their business activities. This intent is futher expressed in paragraph (D) of the definition of "major swap participant" which excludes entities whose primary business is financing the purchase or lease of their or an affiliate's manufactured products and who use derivatives "for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures".

We would suggest that the exclusion in paragraph (A)(i)(I) of the definition for swaps entered into to hedge or mitigate commercial risks should be defined in the rule to include the use of swaps by other entities to hedge underlying commercial risks of their business related to interest rate and foreign currency exposures. This would ensure that entities using swaps only to mitigate such risks of their business and not for trading or speculative purposes would not be considered "major swap participants".

We respectfully suggest that in proposing a rule regarding the second category of major swap participants as defined in paragraph (A)(ii) of the definition, the Commissions consider in their definitions of what creates a "substantial counterparty

exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets" how exposures are collateralized. Specifically, American Express believes that the extent to which such exposures are collateralized by cash or other liquid securities that are in the possession of the entity should be taken into account in determining whether an entity has "substantial counterparty exposure". Counterparty exposures that are fully collateralized by cash or other liquid securities that are in the possession of the entity should not constitute such types of exposures at all. Therefore, entities whose outstanding swaps are fully collateralized would not be considered "major swap participants" for purposes of the Act and the extent of collateral, if less than full, would be taken into account in determining whether an entity has the type of "substantial counterparty exposure" that would cause it to be deemed a "major swap participant". We believe this is consistent with the intent of the Act to regulate participants whose swap activities could have adverse effects on the banking or financial system, since positions that are collateralized would not result in uncovered claims by one counterparty on the other and would not result in market or system disruptions if one counterparty was unable to perform, since the party holding the collateral would have sufficient cash or assets to replace its swap position without disruption.

Similarly, we would suggest that the Commissions also consider that swap positions between related entities that are under common control also be excluded from being considered swaps creating "substantial counterparty exposure". Such transactions between affiliates create exposure for the market only to the extent of the net position created by all affiliates. Since the counterparties are under common control and the likelihood of default or failure to perform by one of the related parties is extremely remote, imposing regulation as a "major swap participant" on such parties would not result in a commensurate benefit.

We would also respectfully suggest that in proposing a rule further defining a "major swap participant" under the category described in Paragraph (A)(iii), the Commissions prescribe that whether a financial entity not subject to capital requirements of a Federal banking agency is "highly leveraged" be determined based on the analogous Federal banking regulations and not on a new regulatory regime. We believe this is consistent with the intent of the definition in Paragraph (A) (iii) and would result in increased certainty and consistency of regulation of non-bank regulated "financial entities".

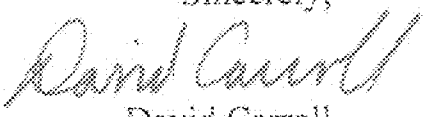
Swap Dealer

Section 721(a)(21) of the Dodd-Frank Act defines the term "swap dealer" and provides that the CFTC shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers. That section of the Act also provides that the CFTC shall promulgate regulations to establish factors with respect to the making of this determination to exempt.

We respectfully suggest that the CFTC consider, as one of the grounds for concluding that an entity's swap-dealing activities are de minimis, a rule that looks at factors that would include comparisons of the entity's volume of swap-dealing activities relative to the assets or capital of the entity and also relative to the size of the relevant swap market. For example, the CFTC could adopt a rule that provides that an entity that meets the definition of a swap dealer in Section 721(a)(21) of the Dodd-Frank Act will not be so designated as long as the notional value or mark to market value of the swaps held by such entity that are related to its swap dealing activities does not exceed specified percentages relative to the assets or capital of the entity and to the total size of the relevant market. We believe that the intent of the Dodd-Frank Act was to recognize that some large companies may engage in swap dealing activities for customers, but that as long as those activities are immaterial to the operations of the entity and to the relevant swap market, such an entity should not be treated as a swap dealer. Comparing the entity's swap dealing activities to its assets or capital and to the relevant market would be a reasonable and objective way to establish the de minimis exemption called for by the Act, and would allow market participants to have certainty as to the scope of the de minimis exemption.

Please contact the undersigned at (212) 640-5783 should you have any questions or need further information concerning these comments.

Sincerely,



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