



THOMSON REUTERS

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November 17, 2010

VIA ELECTRONIC FILING

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, DC 20581

Re: Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest; Proposed Rule; RIN 3038-AD01

Dear Mr. Stawick:

Thomson Reuters welcomes the invitation to submit comments to the Commodity Futures Trading Commission (“CFTC”) on the proposed rule regarding the mitigation of conflicts of interest.¹ Thomson Reuters supports the CFTC’s efforts to implement Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), generally, and to improve the governance of Swap Execution Facilities (“SEFs”) and address conflicts of interest when they arise. Thomson Reuters believes the CFTC should be promoting competition across markets, and that its regulations should allow SEFs to operate efficiently while meeting the goals of Dodd-Frank.

BACKGROUND

The Proposed Rules will likely affect Thomson Reuters principally because of its operation (through subsidiaries) of the Thomson Reuters Dealing and Thomson Reuters Matching applications, and in particular its ownership interest in Tradeweb. Thomson Reuters Dealing is a leading global, multi-asset electronic trading platform and related data services providing trusted price transparency. Dealing was launched in 1982 and is now being used actively by over 18,000 professionals in over 125 countries for trading a diverse range of over 60 sub-asset classes including derivatives. Thomson Reuters Matching is an anonymous electronic trading application for the foreign exchange spot and swap markets with a central order book model. Both applications provide technology and connectivity for market participants and provide both pre- and post-trade transparency on an efficient and orderly trading platform together with post-trade efficiency. Tradeweb is a leading global provider of electronic trading platforms and related data services for the OTC fixed income and derivatives marketplaces.

¹ See generally, “Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest” (“Proposed Rule”), 75 Fed. Reg. 63732 (Oct. 18, 2010), to be codified at 17 C.F.R. Parts 37, 38, 39, and 40.

Thomson Reuters anticipates that some or all of these trading platforms may have to register as SEFs under applicable provisions of Dodd-Frank and its implementing regulations.²

In addition to trading applications, Thomson Reuters offers exchanges, brokers, and market makers with the cross-border technical and communications capabilities, connectivity, trusted independent data, risk management and back office functionality that are essential to enable reliable and resilient market participation. Over half a million financial professionals in over 40,000 organizations across more than 155 countries manage risk, price portfolios, drive trading strategies and reach their clients and trading partners seamlessly across the Thomson Reuters community.

COMMENTS

The Proposed Rule would: (1) impose new and significant public director requirements on SEFs and potentially their parents or other affiliates; (2) require SEFs to organize various committees of their Boards of Directors along with internal disciplinary bodies; and (3) place strict limits on a SEF member's ownership or control of voting equity in that SEF. Thomson Reuters' comments will address each of these aspects in turn.

A. Public Director Requirements

The Proposed Rule would mandate that at least 35% (and not less than 2) of the directors on a SEF's Board of Directors be "public," that is directors who are independent of any conflict with a participant in the SEF.

In general, Thomson Reuters (as an NYSE-listed company) supports the concept of requiring independent directors on boards of public companies. Thomson Reuters believes that in the context of a public company, independent directors play an important role in assuring investor confidence, and that their exercise of independent judgment helps maximize shareholder value in the company on whose board they sit.

Thomson Reuters urges the CFTC not to extend the governance and ownership restrictions beyond the class of SEFs delineated in sections 725(d) and 726(b) of the Dodd-Frank Act. Both of those subsections direct the Commission to address conflicts of interest among those SEFs that have material debt or equity investment by swap dealers or major swap participants. SEFs that are wholly owned by entities that do not trade through the applications do not raise any of the concerns the Commission has identified regarding maintaining a balance between advancing commercial interests and fulfilling self-regulatory responsibilities.

To the extent the CFTC imposes a public director requirement, Thomson Reuters believes that the presence of two public directors on the board of the SEF would be more than sufficient to ensure the Dodd-Frank objectives that an independent voice is present on the Board, to improve governance process, and to lessen conflicts of interest. This is especially true where a SEF is wholly owned by another entity or group of affiliated entities that are principally engaged in businesses unrelated to swaps. The Dodd-Frank objectives should not be interpreted so broadly that they threaten disrupting SEF operations or discouraging

² Tradeweb is filing separate comments in response to the Proposed Rule, and Thomson Reuters supports the comments made and alternatives proposed in that filing.

investment in new or existing SEFs. A rule that is overly prescriptive in board composition or that restricts the organic form of the SEF may operate to suppress the number of new or expanded SEFs that will be available to accept the additional swaps that Dodd-Frank pushes towards regulated trading platforms. And where a SEF is directly or indirectly wholly owned by a single affiliated group, and thus other directors will be appointed by that owner, specific percentages carry less meaning – what is important is that the voice of unconflicted, public directors be included in the governance dialog.

Thomson Reuters expresses its concern that the standard for who qualifies as a public director is unduly restrictive. SEFs may be just one entity within a large family of corporations, such as Thomson Reuters, only a few of which (depending on upcoming entity definitions under Dodd-Frank) are engaged in the execution of derivatives trades. These other entities may have highly qualified employees who are very familiar with that SEF's relevant market and operations. However, under the proposed rule, § 1.3(ccc)(1)(i) would disqualify such knowledgeable individuals from being a public director on the basis that their employment with an affiliate of a SEF constitutes a 'material relationship' with the SEF, notwithstanding a lack of any conflict of interest with the orderly operation and regulatory compliance of the SEF. Section 726(b) of the Dodd-Frank Act focuses on mitigating conflicts of interest in connection with the interaction between swap dealers and major swap participants, on the one hand, and DCOs, DCMs, and SEFs on the other. Accordingly, Thomson Reuters suggests that § 1.3(ccc)(1)(i) of the proposed rule should be revised to permit persons to serve as public directors of a SEF if they are employed by affiliated entities and otherwise have no material relationship with such SEF nor with any other SEF, swap dealer, or major swap participant participating on such SEF.

If the CFTC revises the proposed rule as suggested in the previous paragraph, it should also clarify that the restriction in § 1.3(ccc)(1)(iv) would be limited to payments received from or in relation to affiliates which are SEFs, swap dealers, or major swap participants participating on the SEF in question. In addition, it would be useful for the CFTC to issue guidance, so that boards of directors can assess and make findings regarding their public directors and on salaries or other compensation made to such public directors by virtue of their employment at affiliated corporate entities. The compensation and bonus systems employed by many large corporate group structures in which a SEF may be owned are multifaceted—an employee's bonus system may depend on the performance of many components of the broader corporate family, and the amount of compensation or bonus that is attributed to the registered entity may be so attenuated that it is doubtful that the individual would cast a board-level vote based on that potential compensation impact. Thomson Reuters suggests that a board member can be considered "public" unless a substantial portion of his or her compensation is directly and substantially related to the performance of the regulated SEF or is attributable to an affiliate that participates in trading on the SEF. Specific agency compliance guidance in this area now will help avoid any confusion regulated entities could encounter in applying these provisions in the future.

In any case, the CFTC should include a waiver provision for use in appropriate exigent circumstances, for example if it finds, as Thomson Reuters believes may be the case, that the number of qualified (with respect to experience and corporate non-affiliation) public directors is insufficient to the number of positions they would have to fill under this proposed rule.

B. Ambiguous Applicability Of Public Director Requirement To Parents Of SEFs

The Proposed Rule sets an ambiguous standard for application of the public director requirement to the affiliated companies of a SEF. Specifically, it applies the public director requirement to entities that exercise “direct . . . control (including through the exercise of veto power) over the day-to-day business operations of a registered entity [such as a SEF].” The touchstone for the application of the public director requirement to parent and related companies is operational control, “whether through the ownership of voting equity, by contract, or otherwise.” The Proposed Rule nevertheless states that “the term ‘operate’ shall not prohibit an entity, acting as the sole or majority shareholder of such registered entity, from exercising its rights as a shareholder under any contract, agreement, or other legal obligation.” This standard is ambiguous and the CFTC should clarify that whether an affiliate exercises “control over the day-to-day business operations” of the registered entity is limited to whether it exercises direct control over the central operational functions of the SEF that are regulated by Dodd-Frank and the CFTC—in essence, matters governed by the Core Principles set out in Section 733.

In any case, the upward (from a SEF) application of the public director requirement would either require parents and other affiliates exercising control to introduce public directors into a much wider array of their business unrelated to the SEF or force these entities to reduce their control over enterprises into which they may have made a significant investment to a point where there might be little to no accountability to the SEF’s owner. This would discourage future innovation in the swaps exchange space and is a result that the CFTC should strive to avoid. To the extent that the CFTC imposes a public director requirement on affiliated entities, it should not require that those public directors have a vote on or participate in matters that are unrelated to the SEF. Otherwise, there could be significant disruption to the governance of entities whose portfolio of subsidiary companies includes non-CFTC registered entities carrying out a range of unrelated businesses.

C. Board Organizational Requirements

The Proposed Rule would also require SEFs to establish numerous committees within their boards of directors as well as disciplinary bodies to address misconduct.

As currently proposed, these would be:

- a “Regulatory Oversight Committee,” which would monitor the effectiveness of the SEF’s regulatory program and the performance of its Chief Compliance Officer. The Regulatory Oversight Committee would be “composed entirely of Public Directors.”
- a Membership or Participation Committee, which would determine the standards for participation in the SEF and review appeals of staff denials of the same. The Membership or Participation Committee would be composed of “thirty-five percent Public Directors.”
- a “Nominating Committee,” which would be charged with nominating candidates for membership on the SEF’s Board of Directors. The Nominating Committee

would have to be both chaired by a Public Director and composed “of at least fifty-one percent Public Directors.”

- Any formed “Executive Committee” would have to be composed of “at least thirty-five percent, but no less than two, Public Directors.”

The Proposed Rule would require each registered entity (including SEFs) to establish “one or more disciplinary panels” which would be “responsible for conducting hearings, rendering decisions, and imposing sanctions with respect to disciplinary matters.” These would be formal bodies charged with furthering a SEF’s self-regulatory obligations and chaired by a “Public Participant” who would be qualified to serve as a public director.

Thomson Reuters supports the creation of a Regulatory Oversight Committee to monitor the sufficiency and effectiveness of the SEF’s self-regulation. Thomson Reuters suggests that the ROC should be composed of 51% rather than 100% public directors. A majority of public directors is sufficient to protect self-regulatory functions from conflicts of interest, and a higher composition rate would silence the informed voice of the SEF organization and its role in overseeing its regulatory compliance. In addition, the requirement that a SEF have a Chief Compliance Officer will provide additional compliance assurance. Requiring a simple majority of the ROC to be public directors will allow the SEF’s management to bring to bear their intimate familiarity with the company and the market.

Thomson Reuters also supports the establishment of a Nominating Committee composed of 51% public directors, but its role should be limited to the nomination of public directors rather than all directors, so as to preserve a role for the owner of a SEF to appoint a certain number of directors. In addition, as with a public company, there should be a mechanism provided for in the applicable rules by which shareholders may nominate directors as well. Otherwise, the Proposed Rules would give public shareholders greater freedom to nominate directors than shareholders in a private company, and public directors would have the ability to be entrenched and insulated from any assessment by the shareholders of their performance. Such a result would be highly anomalous. Thomson Reuters believes that having a majority of public directors on a nominating committee that is charged with making all director nominations is unduly onerous relative to the conflicts that may be ameliorated.

Regarding any Executive Committee the Board elects to establish, Thomson Reuters believes the committee should include at least one public director, but it should be exempt from this requirement where the mandate and authority of a particular Executive Committee is unrelated to the core regulated aspects of the SEF.

Thomson Reuters remains concerned that the proposed public director requirements pose a risk of stifling the ability of a regulated company to assemble the best Board possible, and for a SEF wholly owned by a wider business enterprise to be run in an efficient manner while still ensuring its governance benefits from active involvement of directors not beholden to the interests of participants in the facility. The high public director composition requirements could exclude good and experienced candidates from consideration, erode a board’s authority and business judgment unnecessarily and overly restrict how boards of directors choose to delegate (or not delegate) authority to committees.

D. Voting Equity Limits

The CFTC has proposed that a SEF “shall not permit any member, together with any Related Persons of that member, to: beneficially own, directly or indirectly, more than twenty percent” of any class of voting stock in the SEF, or, alternatively, to enter into any kind of voting agreement or proxy that would allow such a member or Related Person to control more than “twenty percent of the voting power of any class of equity interest of the registered swap execution facility.” These limits would apply to the direct or indirect parent corporation of a SEF, “in the same manner” as to the SEF.

These limits are aimed at “members” of the regulated swap markets and should expressly not apply to owners who are not swap dealers or major swap participants involved in trading on that platform. The ownership limits set out in proposed section 37.19(d)(2) apply to a “member” of a SEF, but the proposal contains no specific definition of a SEF member for this purpose. Comparable definitions of CFTC-regulated entities, relating to members of a clearing organizations and members of DCMs, *see* 17 C.F.R. 1.3(c), (q), do not include as members those entities who merely own a share of the regulated entity. Any definition of a SEF member should similarly be limited to participants of a SEF that engage in trading activities on that SEF, and exclude entities who only own all or a portion of the SEF but are not participating in its trading activity.

E. Extraterritoriality/Mutual Recognition

A related and final consideration is the extraterritorial impact of the CFTC’s proposed rule. The proposed rule itself says nothing about extraterritorial applicability. Presumably, the Proposed Rule’s extraterritorial impact, if any, will be the same as that of the Dodd-Frank Act provisions from which it stems.

In relevant part, § 722(d) appears to control the scope of the CFTC’s jurisdiction under Title VII, Subtitle A, Part II of the Dodd Frank Act, which encompasses § 726. Section 722(d) provides that “[t]he provisions of this Act relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities—(1) have a direct and significant connection with *activities in, or effect on, commerce* of the United States; or (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010.” *See* Dodd Frank § 722(d)(i)(emphasis added). Section 722(d) appears to legislate the kind of “conduct” and “effects” extraterritoriality tests into the Dodd-Frank Act which the Supreme Court recently ruled could not be supplied by the courts absent just such an express legislative instruction. *See Morrison v. Nat’l Austl. Bank Ltd.*, 130 S. Ct. 2869, 2878 (2010).

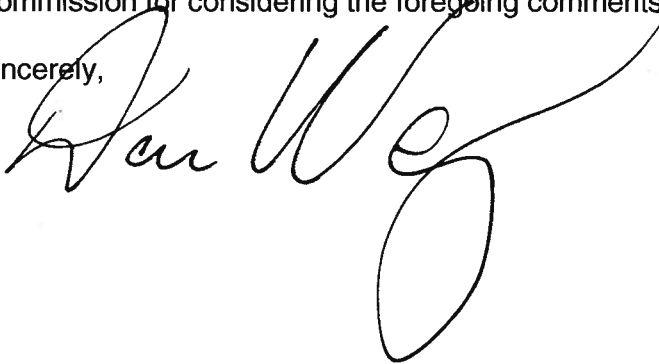
Thomson Reuters anticipates that upcoming rules that implement the definition of a SEF and the scope of registration requirements will provide clarity here, as will implementing rules regarding mutual recognition. Presently, there appears to be a high level of harmonization among the proposals, but the final regulatory systems are not in place in the U.S. and in Europe. In this regard, and with respect to all rulemakings where the CFTC is attempting to put forth a harmonized approach between the CFTC, SEC and other U.S. regulators, as well as foreign regulatory bodies, there is a unique challenge presented by the notice-and-comment

rulemakings, because revising a proposed rule in light of meritorious public input runs the risk of upsetting prior harmonization discussions. At this stage, Thomson Reuters would suggest that the CFTC should be reserved in its extraterritorial application of Dodd-Frank regulations, and liberal in its application of mutual recognition, so that regulatory agencies are able to give due consideration to comments submitted by the stakeholders and are able to revise proposals accordingly.

F. Conclusion

Thomson Reuters remains committed to working with the CFTC to support a common-sense and efficient implementation of the requirements of the Dodd-Frank Act. We thank the Commission for considering the foregoing comments on the proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Weg". The signature is fluid and cursive, with a large, sweeping loop at the end.