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Comments of SunGard Energy & Commodities re:
Process for Review of Swaps for Mandatory Clearing
17 CFR Parts 39 and 140; RIN 3038–AD00

December 16, 2010

By Electronic Submission

David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20518

Dear Mr. Stawick:

SunGard Energy & Commodities appreciates the opportunity to comment on this proposed rulemaking. Our solutions help energy companies, corporate hedgers, hedge funds and financial services firms to compete efficiently in global energy and commodities markets by streamlining and integrating the trading, risk management and operations of physical commodities and their associated financial instruments. Through real-time data, connectivity and analysis, we help customers achieve transparency and regulatory compliance, address end-to-end transaction and operational lifecycles, and meet time-to-market needs with flexible deployment options.

We request clarification on five aspects of the proposed rules or accompanying explanations.

1. **Please clarify when a DCO can begin listing a new swap for clearing:**

   a. Can a DCO begin listing a new swap for clearing once eligibility for clearing is established under rule 39.5(a) (2), independent of the review for mandatory clearing that is required in 39.5(b)?

   b. When a DCO is determined to be eligible to clear a new swap, or class, category, group or type of swap under 39.5(a) (2), how will CFTC notify the public of the effective date of eligibility?

2. **Please further clarify the effect of the "presumption of eligibility" for similar swaps?**

   a. What criteria will the Commission use in its review under 39.5(a)(1) to determine whether a swap, which a DCO wants to list for clearing, is in the same class, category, group or type as other swaps listed for clearing by that DCO? In particular, will these criteria include a consideration of the concentration of market participants for the specific swap? (See also question 5).

   b. Will the DCO be permitted to clear the swap while this review takes place?

   c. If the Commission concludes that the swap is NOT in the same class, category, group or type, will the DCO need to suspend clearing pending determination of eligibility?

3. **Re: the eligibility of a DCO to clear pre-enactment Swaps**

   CEA 2(h)(2)B(ii) provides: ''(ii) Any swap or group, category, type, or class of swaps listed for clearing by a derivative clearing organization as of the date of enactment of this subsection shall be ***considered submitted*** to the Commission" (emphasis added)

   Please define what "considered submitted" means in CEA 2(h)(2)(B)(ii)

   a. Does it mean that information required to be submitted under CEA 2(h)(2)(B)(i) is not required for pre-enactment cleared swaps?
   b. Does it mean that the DCO is automatically eligible to clear the swap (i.e. is the eligibility to clear grandfathered)
   c. Is the DCO permitted to continue to clear these swaps while the commission conducts the mandatory clearing review under CEA 2(h)(2)B(iii)?

4. **Re: Rules for mandatory clearing of pre-enactment swaps:**

   CEA 2(h)(2)E states that "Not later than 1 year after the date of the enactment of this subsection, the Commission shall adopt rules for a derivatives clearing organization's submission for review, pursuant to this paragraph, of a swap, or a group, category, type, or class of swaps, that it seeks to accept for clearing. ***Nothing in this subparagraph limits the Commission from making a determination under subparagraph (B)(iii) for swaps described in subparagraph (B)(ii).*** (Emphasis added)

   Please clarify (in the proposed rule or the discussion thereof) the meaning of the last sentence of CEA 2(h)(2)E:

   a. Does it mean that determination of mandatory clearing for pre-enactment swaps can be made by some process other than the proposed rule?

   b. Does it mean that this determination can be made prior to adoption of a final rule?

5. **Does the CEA, as amended by the DFA or anything in this NOPR require the CFTC to consider the "concentration of market participants" in making a determination on mandatory clearing?**

   In determining whether a swap should be mandated for clearing, we propose some form of 'concentration test'. We are concerned that if the market for a swap is too heavily concentrated in the hands of a few market makers on the supply side or a handful of hedgers or speculators on the demand side; it would hamper discovery of market clearing price. In addition, it will impose liquidity risk to the clearing organization if it wants to unwind a transaction on behalf of a participant in the event of default. We believe under the scenario where a said market is heavily concentrated it would be better to impose capital requirements on individual counterparts in a bilateral arrangement than to force clearing through a DCO.

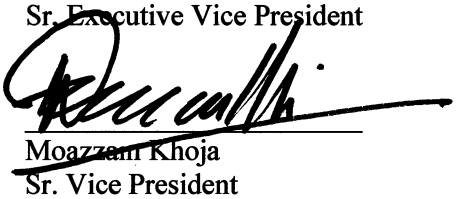
   This 'Concentration test' can be imposed based on number of participants or concentration of exposures by participant. For example, one could calculate the percentage of total gross exposure of each market participant and devise a certain threshold. If one or more than one participant is above the threshold then CFTC may not impose mandatory clearing.

In particular, we are concerned that such a swap could be presumed eligible for clearing based on similarity in "form" to a group of swaps for which clearing is mandatory. A swap may be in the same class, category, or form, but may be traded by a handful of participants subjecting it to the concentration risk.

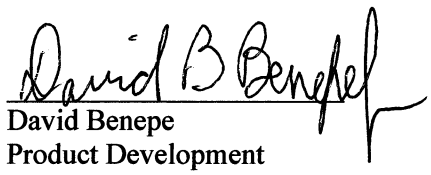
An example would be a basis swap on a North American natural gas index for gas delivered at a pipeline interconnection through which ownership or control of capacity is concentrated in the hands of a few physical market participants.

Respectfully yours,

Ben Jackson
Sr. Executive Vice President



Moazzam Khoja
Sr. Vice President



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