

February 7, 2011

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

Re: Notice of Proposed Rulemaking RIN 3038-AD19, Swap Data Recordkeeping and Reporting, 17 CFR Part 45

Chatham Financial Corp. (“Chatham”) is pleased to respond to the request for comments by the U.S. Commodity Futures Trading Commission (“CFTC”) (the “Commission”) regarding its Notice of Proposed Rulemaking (“NPR”) pertaining to *Swap Data Recordkeeping and Reporting* issued under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).

Introduction

Chatham is a consulting company that works with over one thousand companies from virtually all business sectors that employ over-the-counter (“OTC”) derivatives to manage risks they face in connection with their day-to-day businesses. Chatham assists its clients with all facets of the hedging process, from structuring and executing hedges to providing on-going valuations, reporting and accounting. Throughout the policy debate over regulation of the OTC derivatives market, Chatham has advocated for strong but effective regulation that is targeted toward market participants whose use of derivatives poses a threat to our financial system.

Chatham believes that trade reporting is fundamental to the Dodd-Frank Act’s core objective of reducing and containing systemic risk. Indeed the reporting requirement could strengthen the market provided that certain precautions are taken with respect to the impact of reporting requirements on end users that do not pose a threat to our financial system.

For the most part, the burden of reporting trade details to a registered swaps data repository (“SDR”) will be borne by swap dealers (“SDs”), major swap participants (“MSPs”), swap execution facilities (“SEFs”), designated contract markets (“DCMs”) and derivatives clearing organizations (“DCOs”). In certain circumstances, however, non-SD/non-MSP end users may be required to report swaps data. Chatham recommends that the Commission make the following modifications to the proposed rule in order to limit the circumstances in which end users are required to report, and to minimize the burden on end users in those cases where they are required to report.

Topic: Swap Data Reporting

Sub Topic: Determination of which counterparty must report

Chatham agrees with the Commission's stated intention of calling for reporting of swaps data by the "counterparty that has the easiest, fastest, and cheapest access to the set of data in question."¹ SDs, MSPs, SEFs, DCMs and DCOs are likely to have existing operational resources and technological infrastructure sufficient to support such reporting, whereas non-SD/MSP end users are less likely to have adequate resources available.

Chatham offers the following two examples of instances in which a non-SD/MSP end user might be required to report swaps data. Please note that this is by no means meant to serve as an exhaustive list of the circumstances in which a non-SD/MSP could be the reporting entity.

Example 1: Transactions between U.S. end users and non-U.S. Swap Dealers or Major Swap Participants

Chatham has concerns with the language in Section 45.5(d) of the propose rule which would impose the reporting burden on a U.S. end user engaging in a transaction with a foreign SD or MSP.

Provision §45.5 (d) "Determination of which counterparty must report," states "Notwithstanding the provisions of § 45.5(a) through (c), if only one counterparty to a swap is a U.S. person, that counterparty shall be the reporting counterparty and shall fulfill all counterparty reporting obligations." This provision seems reasonable in the case where a foreign SD/MSP faces a SD/MSP that is domiciled in the U.S. or where a foreign non-SD/MSP faces a non-SD/MSP domiciled in the U.S. However, in situations where the non-SD/MSP counterparty domiciled in the U.S. faces a foreign SD/MSP, the 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 set of data" that would be required to be reported.

Therefore we request clarification that if a 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. This would prevent imposing undue burdens on end users whose derivatives activities do not pose systemic risk and ensure that the party most capable of meeting reporting requirements bears that responsibility.

¹ 75 Fed. Reg 76581 (Dec. 8, 2010)

Example 2: Transactions between affiliated entities under the same corporate umbrella

Chatham is concerned that inter-affiliate swaps (i.e., transactions between affiliated entities under the common control of the same parent company) could be subject to the reporting requirements.

Many companies have centralized treasury groups where expertise with hedging and hedge accounting resides. These centralized treasury groups may execute dealer-facing transactions, and immediately “execute” or, more precisely, document a matching transaction with a corporate affiliate. Such a matching, or “back-to-back,” transaction allows affiliated entities to hedge their commercial risks, while taking advantage of the efficiency and expertise of a centralized dealer-facing treasury group.

Chatham believes the substantive benefit of reporting requirements resides entirely with the dealer-facing transaction. The Commission has outlined the key regulatory objectives for reporting as follows:

- Monitoring gross and net counterparty exposures
- Promotion of market competitiveness and efficiency
- Protection of market participants against fraud, manipulation, and abusive trading practices
- Enforcement of position limits
- Ensuring the financial integrity of the clearing process

It is not necessary to require the reporting of inter-affiliate transactions as these objectives can be accomplished by requiring the reporting of the transactions between dealers and dealer-facing corporate entities. Moreover, inter-affiliate transactions would require one of the two affiliated entities - either way, a non-SD/MSP - to be the reporting entity. Non-SD/MSP end users generally lack the significant resources necessary to report swaps. Therefore, Chatham recommends that inter-affiliate swaps should not be required to be reported so long as the related dealer-facing swaps are reported.

Topic: Swap Data Reporting

Sub Topic: Timing of Reporting for non-SD/MSP counterparty

Chatham supports the efforts of the Commission to differentiate timing requirements based on the type of reporting entity and whether or not execution and verification can be done electronically. We agree with the Commission's assertion that Congress made a policy choice:

“...to place lesser burdens on non-SD/MSP counterparties to swaps, where this can be done without damage to the fundamental systemic risk mitigation, transparency, standardization, and market integrity purposes of the legislation.”²

Therefore, Chatham would like to highlight alternate approaches that would place a lesser burden on end users.

Swap Creation Data

For trades that are not executed on an electronic trading facility, some manual work is required after execution. The use of an electronic confirmation system does not eliminate the manual work required, as one firm would typically have to enter trade details in order to allege the trade and initiate the electronic confirmation process. For trades that are not confirmed electronically the manual work required would be even greater. Given the limited staff and operational resources available to most non-SD/MSP end users, and given the fact that end users do not pose systemic risk, we recommend the following reporting deadlines:

- For trades that are electronically confirmed, the non-SD/MSP end user would be required to report the trade by the end of the next business day following execution; and
- For trades that are not electronically confirmed, the non-SD/MSP end user would be required to report the trade by the end of the second business day following execution.

Swap Continuation Data

Chatham understands the need for the reporting of valuation data in order to monitor the risk held by market participants. The current proposed rule does not specify the time deadlines by which a non-SD/MSP would be required to report valuation data. Rather, the proposed rule requests comment on the time intervals that would be appropriate for non-SDs/MSPs.

It is not likely that end users that utilize OTC derivatives for risk management purposes would have the systems or staff required to produce these valuations. Doing so would require a system for capturing trade details, market-data feeds, advanced models, controls and the personnel to run and maintain these systems. It is likely, therefore, that end users would be subject to the burden and expense of paying a third-party service provider to perform these valuations.

In order to limit the burden on end users, Chatham recommends that the Commission align the timing for valuation reporting requirements for non-SD/MSP counterparties with the timing for

² 75 Fed Reg 76579 (Dec. 8, 2010)

portfolio reconciliation requirements outlined in the Commission’s NPR on Portfolio Reconciliation³. Non-SD/MSP end users should be required to provide updated valuation data no more frequently than they are required to reconcile their swaps portfolios (a process which requires the valuation of trades).

Topic: Swap Data Reporting

Sub Topic: Separate warehouse for master agreements and collateral agreements

Master Agreement

The Commission requested comments on whether a separate master agreement library system should be established as part of an SDR. Chatham appreciates the opportunity to consider the potential benefits and drawbacks of additional reporting requirements.

Master agreements may include ISDA Master Agreements and Schedules, Credit Support Annexes and related amendments, a portion of which include standardized or “boilerplate” legal language, but most of which contain highly negotiated and customized legal language. These documents generally are not negotiated and signed via an electronic system; rather, they are negotiated manually, signed, faxed or emailed and then often memorialized as scanned PDF files.

We presume the Commission would not permit an SDR to merely accept submission of a PDF file, but would require the reporting party to extract legal terms and provisions into a specified format. Most market participants, especially non-SD/MSP end users, are unlikely to have an electronic system or operational processes for parsing terms from legal documents and extracting them into a standard reporting format. Therefore, counterparties either would need to manually review, interpret and extract the required fields - a labor-intensive and tedious process which would require subjective interpretations and rekeying of legal text - or incur the cost of having this done by a vendor. The cost of paying a vendor to turn multiple master agreement documents into pre-defined data fields could be significant, especially for non-SD/MSP end users.

The proposed reporting requirements for swap transactions already provide a significant amount of benefits for monitoring systemic risks, counterparty exposures, promotion of market competitiveness and efficiency, and other regulatory goals. It is not clear that a requirement to report any additional master agreement information would provide substantial marginal benefits, especially considering the substantial investment attendant to such a requirement. Therefore, Chatham would encourage the Commission to consider the potential cost and benefits of any master agreements reporting requirement.

Collateral Warehouse

Similarly, the Commission requested comments regarding whether separate collateral warehouse system should be established as part of an SDR to enable regulators to monitor collateral management and gross exposures on a portfolio level. With respect to collateral, we note that

³ 75 Fed Reg 81519 (Dec 28, 2010)

collateral terms are generally managed and posted on a portfolio basis and therefore would be unlikely to align with the swap data reporting on a per-transaction basis, except for those collateral terms which are specific to a transaction rather than the portfolio of transactions executed between the same counterparties.

Similar to master agreements, the Credit Support Annex, which governs collateral terms, includes highly negotiated legal text, not just discrete data fields such as numbers and dates. Given the potential for highly customized terms, the complexity of extracting the terms and reporting in a format that can be consumed by a central repository, it is not clear that the benefit of a collateral warehouse outweighs the associated costs. Perhaps the reporting of current levels of collateralizations on a portfolio basis by counterparty would be more useful than extraction of legal terms from Credit Support Annexes.

Topic: Swap Data Reporting

Sub Topic: Phase-in approach for compliance with rules

The volume of swaps traded and risk held by different market participants varies greatly, as does the sophistication of existing systems, staffing and other operational resources available to various market participants. Given these differences, Chatham recommends that the Commission implement the reporting requirements under the following phase-in approach, whereby different market participants are required to comply by different deadlines:

- DCMs, SEFs and DCOs would be the first group required to comply;
- Bank SDs would be the next group required to comply;
- Non-bank SDs and MSPs would be the next group required to comply; and
- Non-SDs/MSPs would be the last group required to comply.

Conclusion

Chatham appreciates the opportunity to comment on these reporting rules that will affect all participants in the swaps market. We look forward to working with the Commission to help implement rules that will strengthen the derivatives market, and, at the same time, not unduly burden end users or the larger economy.

Sincerely,



Ted McCullough
Managing Director
Chatham Financial Corp.