



1901 N. FORT MYER DRIVE • SUITE 500 • ARLINGTON, VA 22209-1604 • 703-351-8000 • FAX 703-351-9160



February 22, 2011

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

Re: Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant” (RIN 3038-AD06)

Dear Mr. Stawick:

The Petroleum Marketers Association of America (“PMAA”) and the New England Fuel Institute (“NEFI”) (collectively, “Associations”) submit the following comments regarding the **Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant” (RIN 3038-AD06)**.

PMAA and NEFI support the Commission’s definitional framework and regulatory structure proposed in the rule. PMAA and NEFI believe that the regulatory structure put forth in this rule, when read in conjunction with the **NPR RIN No. 3038-AD10 End-User Exception to Mandatory Clearing of Swaps**, properly provides a framework that excludes *bona-fide* business end users, that engage in swaps for the purpose of mitigating a legitimate commercial risk (i.e., price risk associated with a physical commodity) from falling within any of the categorical definitions that would require registration as a Swap Dealer or Major Swap Participant.

Introduction

The Proposed Rule was prepared and issued jointly with the Securities and Exchange Commission, as required under Section 712(d) of the Dodd-Frank Act. PMAA and NEFI believe the Commission has proposed a well-tailored definition of “swap dealer” that applies only to those entities that regularly engage in swap dealing as part of a “regular business.” The definition should not inadvertently capture end-users that enter into swaps to hedge or mitigate legitimate commercial risk. PMAA and NEFI support the proposed rule and believe it will be key to bringing transparency and oversight to the markets and therefore protecting the interests of the consuming public.

I. The Definition of “Swap Dealer”

Section 1a (49) of the Commodity Exchange Act, as amended by the Dodd-Frank Act (“CEA”), defines a swap dealer as any person who:

- A. holds itself out as a dealer in swaps;
- B. makes a market in swaps;

C. regularly enters into swaps with counterparties as an ordinary course of business for its own account;
or

D. engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.

The Commission has provided further guidance in this proposed rule that articulate certain activities practiced by “Swap Dealers” that distinguish them from other market participants. PMAA and NEFI support the Commission’s expansion of the statutory definition which brings further clarity identifying those entities that must register as swap dealers. The rule properly requires registration as a “Swap Dealer” for entities that:

- accommodate demand for swaps from other parties;
- are generally available to enter into swaps to facilitate other parties’ interest in entering into those instruments;
- do not request that other parties propose the terms of swaps, but rather enter into those instruments on their own standard terms or on terms they arrange in response to other parties’ interests; and
- have the ability to arrange customized terms for swaps upon request, or to create new types of swaps on their own initiative.

PMAA and NEFI support the Commissions definitional framework.

II. Statutory Exemption from Definition of “Swap Dealer”

Congress provided two express statutory exceptions from the definition of swap dealer.

1. The term “Swap Dealer” does not include any person that “enters into swaps for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.”
2. The term “Swap Dealer” does not include anyone that engages in a “de minimis” quantity of swap dealing in connection with transactions with or on behalf of its customers.”

PMAA and NEFI support the Commissions proposed rule incorporating the two expressed statutory exceptions from the definition of “Swap Dealer.”

Conclusion

PMAA and NEFI support the Commission’s proposed rule and believe it will be crucial to bringing transparency and oversight to the markets and therefore protect the interests of the consuming public. We thank you for the opportunity to comment and we are available any time to answer any questions you may have.

Respectfully Submitted,



Dan Gilligan
PMAA President



Jim Collura
NEFI Vice President