

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

RE: RIN No. 3038-AD10—Comments on Proposed Rulemaking Regarding the End-User Exception to Mandatory Clearing of Swaps, 75 Fed. Reg. 80,747 (Dec. 23, 2010)

The Petroleum Marketers Association of America (“PMAA”) and the New England Fuel Institute (“NEFI”) (collectively, “Associations”) submit the following comments in response to the Notice of Proposed Rulemaking, End-User Exception to Mandatory Clearing of Swaps, 75 RIN No. 3038-AD10.

PMAA and NEFI support the Commission’s proposed framework whereby swap market participants can elect to use the end-user exception to the mandatory clearing requirements contained in the Dodd-Frank Act. PMAA and NEFI believe that the regulatory structure put forth in the NPRM properly provides relief from mandatory clearing requirements for the true business end users that engage in swaps for the purpose of mitigating commercial risk.

Introduction

Title VII of the Dodd-Frank Act designates the mandatory clearing of swaps as the critical procedure to avoid another financial crisis similar to that experienced in 2008. The end user exemption contained in the Dodd Frank Act is intended to provide relief from enhanced filing requirements for those commercial entities that actually take delivery of the product for use in their primary business. The companies represented by PMAA and NEFI exemplify the types of business entities that the end user exemption is designed to permit collection of sufficient, but not burdensome, regulatory information regarding an entities’ business activities and financial means. The end user exemption recognizes that for those companies that actually take delivery of a commodity, any increase in costs imposed by new regulatory requirements must, out of necessity, be passed on to the end consumer. The end consumer, in all cases, is the customer of the business that qualifies for the end user clearing exemption. PMAA and NEFI urges the Commission to consider the following two points that would strengthen the regulatory objective of exempting only legitimate end users while maintaining minimal new regulatory filing requirements.

I. The End User Exemption Must be Narrowly Defined

At its core the end user exemption is designed for those entities that use swaps to “hedge or mitigate commercial risk.” Any entity that requests exemption from clearing should be required to provide information characterizing the risks that they seek to mitigate and they have procedures in place that accomplish that end. This additional information will clearly distinguish between businesses that take delivery of the commodity from those that engage in a speculative business activity.

II. Hedging or Mitigating Commercial Risk Must be Narrowly Defined

PMAA and NEFI strongly support the Commission rule as it relates to hedging or mitigation of commercial risk. The Commission's rule defines clear categories that permit swaps to be considered as entered into to hedge or mitigate commercial risk. Importantly, the regulation establishes that swaps that are entered into for the purpose of investment, trading or are speculative in nature will not fall within the definition of hedging or mitigating commercial risk. PMAA and NEFI support the Commission in its narrow and concise definition of hedging and mitigating commercial risk as it applies to the end user exemption.

III. Exempt End Users Informational Filing Requirements

PMAA and NEFI encourage the Commission to allow those businesses that elect exemption from clearing to provide more detail on the nature of their business and the risks they seek to hedge or mitigate. Information on how companies construct their financial dealings should be more general and therefore provide more flexibility for the company to react in the day-to-day business environment without the need to modify or amend information regarding their individual financial transactions that are exempt from clearing. Similarly, when electing to be an exempt end user, the rule should state that the selecting entity will be required to provide initial documentation from the governing authority of the business entity that the election as an exempt end user is authorized. Subsequent transactions should not require de novo review by an entity's governing authority. Reduced regulatory filing requirements and elimination of redundancies limit the costs that must be passed on to consumers.

Conclusion

PMAA and NEFI support the Commission's proposed rule and request that further modifications as proposed above be incorporated into the final rule. We thank you for the opportunity to comment and we are available any time to answer any questions you may have.

Respectfully Submitted,



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