



AIR TRANSPORT ASSOCIATION

1301 PENNSYLVANIA AVENUE, NW SUITE 1100
WASHINGTON, DC 20004-1707
202.626.4000
www.airlines.org

DAVID A. BERG, ESQ.
Vice President & General Counsel
202-626-4234
dberg@airlines.org

December 2, 2010

VIA E-MAIL: Swaps.Reporting@cftc.gov

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

Re: Position Reports for Physical Commodity Swaps, 75 FR 67258
(November 2, 2010); RIN No. 3038-AD17

Dear Mr. Stawick:

The Air Transport Association of America, Inc. (“ATA”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“Commission”) proposed “Position Reports for Physical Commodity Swaps,” 75 *Fed. Reg.* 67258 (November 2, 2010) (“Proposed Rules”). The Proposed Rules would require reports by clearing organizations, their members and swap dealers on positions in swaps that are economically equivalent to futures contracts and options on physical commodities listed for trading on a designated contract market (“DCM”). The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010¹ directs the Commission to establish aggregate position limits for swaps that are economically equivalent to such futures contracts. The proposed rules, if adopted, are necessary for the enforcement of such position limits. For this reason, ATA supports the rules as proposed.

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111–203, 124 Stat. 1376 (2010) (“Dodd-Frank Act” or “the Act”).

ATA

ATA is the principal trade and service organization of the U.S. scheduled airline industry.² It is the nation's oldest and largest airline trade association and its members account for more than 90 percent of the passenger and cargo traffic carried by U.S. airlines. Since its founding in 1936, ATA has played a major role in the regulatory arena by encouraging governmental policy decisions that foster a financially stable U.S. airline industry capable of meeting the nation's travel and shipping needs while withstanding the inherently cyclical nature of this industry.

The U.S. airline industry continues to face many challenges in returning to financial stability. Primary among those challenges is the high cost of jet fuel, whose price is closely tied to the price of crude oil. In 2008, crude oil and jet fuel prices reached all-time highs with significant negative ramifications for air service.³ It is now generally accepted that 2008's unprecedented price rise was due largely to excessive speculation in energy futures contracts. The following oil price implosion in the Fall/Winter of 2008 is another indicator that prices had become, and perhaps still are, disconnected from the market fundamentals of supply and demand.

Airlines consume the fuel they purchase and cannot easily pass on that cost in what is a highly competitive marketplace. Because the airline industry is a substantial consumer of jet fuel, and because individual airlines rely on strategic hedging to manage the financial risk associated with that consumption, ATA and its members have a significant interest in the orderly and proper functioning of the energy commodity markets.

Necessity of Proposed Rules

As noted above, the Dodd-Frank Act requires the Commission to establish aggregate position limits for futures contracts and economically equivalent swaps on physical commodities. Although the Commission currently receives large-trader position reports on all futures and option contracts traded on a DCM, there is no existing reporting structure in place for economically equivalent swaps. The proposed reporting system is necessary if the Commission is to establish and enforce aggregate position limits, thus fulfilling its statutory mandate.

² The members of the association are: ABX Air, Inc.; AirTran Airways; Alaska Airlines, Inc.; American Airlines, Inc.; ASTAR Air Cargo, Inc.; Atlas Air, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; Evergreen International Airlines, Inc.; Federal Express Corporation.; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines, Inc.; UPS Airlines; and US Airways, Inc. Associate members are: Air Canada; Air Jamaica; and Mexicana.

³ U.S. airlines spent nearly \$58 billion on jet fuel in 2008, \$16 billion more than in 2007, and jet fuel surpassed labor as the largest cost category for most airlines.

The Proposed Reporting Framework

The Commission has proposed a framework for reporting swap positions that builds upon the existing large-trader reporting system for futures and options. Specifically, the proposed rules require position reports on economically equivalent swaps by clearing organizations as well as by clearing members and swaps dealers (which the proposed rule refers to as “reporting entities”).

Reports under proposed rule 20.1 will be required for “paired swaps.” These are swaps that may be considered economically equivalent to a futures or option contract listed on a DCM. Paired swaps would include those swaps that are either directly or indirectly linked to a listed contract; settle in whole or in part to a listed contract; or priced at a differential to a listed contract for the commodity for delivery at the same location.

Proposed rule 20.2 identifies a number of specific futures and option contracts that may be covered by Commission-established position limits. These contracts include both futures contracts that have high levels of open interest and significant notional value, as well as other futures contracts based on input from swaps markets participants.

The Proposed Rules Achieve the Statutory Mandate

ATA supports the proposed rules requiring position reports for economically equivalent swaps as an interim solution pending the capacity of swaps data repositories (SDRs) to collect position data. Large trader reporting is essential to the enforcement of speculative position limits, which, in turn, are necessary for an orderly, well-functioning market. ATA believes that the reporting system outlined in the proposed rules is a practical, temporary solution that will fill the void that will exist until SDRs are operational and able to provide the necessary position data. ATA supports the rules as proposed as a practical means by which the Commission can establish aggregate position limits and monitor for violations of those limits.

It is appropriate that, as proposed, clearing organizations report data for each clearing member for each reporting day and that reporting entities provide position reports when those entities hold “reportable positions.”⁴ These entities are best placed to provide such data and are more likely than others in the market to have in place systems that can be adapted to report this information efficiently.

Furthermore, ATA supports the proposed inclusion of a “sunset provision” which would enable the Commission to issue an order ending the effectiveness of these rules upon a finding that SDRs are capable of capturing the relevant swaps position data. It is ATA’s view that the sunset provision provides the Commission the necessary flexibility to adapt and make

⁴ Proposed rule 20.1 defines “reportable positions” as “a position, in any one futures equivalent month, comprised of fifty or more futures equivalent paired swaps or swaptions based on the same commodity.” 75 *Fed. Reg.* 67262.

David A. Stawick
December 2, 2010
Page 4

appropriate changes to the reporting framework in order ultimately to relieve reporting entities of a burden that will best be fulfilled by the SDRs. Although some might argue that the Commission should wait for the SDRs to become operational before proceeding, ATA believes that the proposed reporting requirement is critical to the orderly operation of the market and cannot, and should not, be postponed.

Finally, ATA applauds the Commission for building on its current regulatory framework, such as its proposed use of the 102S and 40S filings. As proposed, these filings will be used by the Commission to identify the person owning an account or controlling its trading. Large traders are already familiar with this requirement from the futures market.

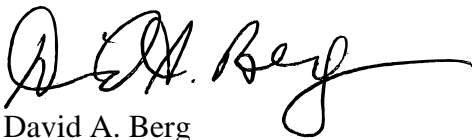
Conclusion

ATA supports the proposed rules and believes they will be conducive to the goal of healthy, orderly and fair futures and derivatives markets. ATA agrees that the proposed reporting system is an appropriate interim measure, which will enable the Commission to establish aggregate position limits on economically equivalent swaps as required by the Act, and thus, help prevent excessive speculation and market manipulation.

ATA appreciates the opportunity to comment on the Notice of Proposed Rulemaking and, for the reasons outlined above, supports the Commission's proposals regarding the reporting of swaps that are economically equivalent to designated contract market physical commodity futures contracts.

Please feel free to contact me with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. A. Berg", with a long, sweeping horizontal flourish extending to the right.

David A. Berg