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5/9/2011

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

Via agency website

Re: Rulemaking under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Title VII”) End-User Exception to Mandatory Clearing of Swaps [RIN 3038-AD10] Definition of “Hedging or Mitigating Commercial Risk”

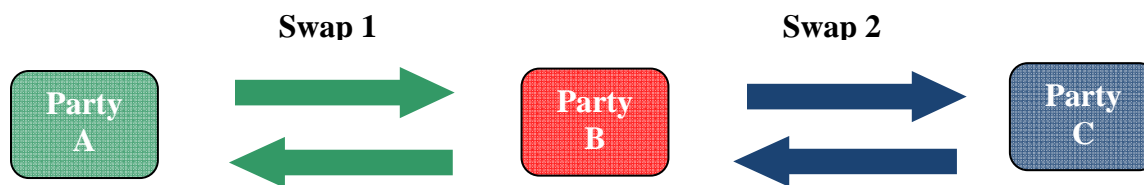
Susquehanna Bank is pleased to submit these comments on the proposed rules released by the Commodity Futures Trading Commission (the “Commission”). We support the Commission in its efforts to promulgate and implement rules directed at reducing systemic risk and improving transparency and efficiency in the derivatives markets.

This letter is not for the purpose of commenting on the question of whether the Commission should exempt certain small financial institutions from the definition of a financial entity.¹ Our comments relate to the definition of “hedging or mitigating commercial risk” as set forth in paragraph (c) of Proposed Rule 39. Specifically, we ask that the Commission clarify whether an off-setting swap would be deemed to be a hedge of commercial risk if the swap is used to mitigate the risk associated with entering into a related swap with an end user and such end-user swap itself is used to hedge or mitigate commercial risk of the end user.

The following example may be useful in illustrating the need for clarification:

Party A and Party B enter into an interest rate swap – Swap 1 - which is a hedge of Party A’s commercial risk. Party B enters into a second interest rate swap – Swap 2 - with Party C which hedges the interest rate risk Party B took on by entering into Swap 1 with Party A.

¹ Regarding our views on the potential exemption for “small financial institutions,” please refer to comment letter No. 27974 signed by Susquehanna Bank and 18 other banks, dated February 22, 2011 and posted here: <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27974&SearchText=peterson>



Under Proposed Rule 39, the answer to the question of whether Swap 2 qualifies as a hedge of Party B’s commercial risk hinges on:

- (i) whether Swap 2 meets the criteria set forth in (c)(1)² and
- (ii) whether Swap 2 does not meet the criteria set forth in (c)(2)

If Swap 2 does meet the criteria set forth in (c)(1) and does not meet the criteria set forth in (c)(2), Swap 2 would qualify as a hedge of commercial risk.

(i) Does Swap 2 meet the criteria set forth in (c)(1)?

It seems that Swap 2 would meet the criteria set forth in (c)(1) under (i)(F) because Swap 2 is used to hedge the fluctuation in interest rates associated with Swap 1, and Swap 1 is a current or anticipated asset or liability; however, we would appreciate clarification as to the Commission’s interpretation of whether Swap 2 would meet the criteria set forth in (c)(1).

(ii) Does Swap 2 meet the criteria set forth in (c)(2)?

Is Swap 2 used for a purpose that is in the nature of speculation, investing or trading?

Footnote 23 to the narrative text preceding Proposed Rule 39 states, “*The Commission preliminarily believes that swap positions that are held for the purpose of speculation or trading are, for*

² Proposed Rule 39(c) states that:
“a swap shall be deemed to be used to hedge or mitigate commercial risk when:
(1) Such swap:
(i) Is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, where the risks arise from:
(A) The potential change in the value of assets that a person owns, produces, manufactures, processes, or merchandises or reasonably anticipates owning, producing, manufacturing, processing, or merchandising in the ordinary course of business of the enterprise;
(B) The potential change in the value of liabilities that a person has incurred or reasonably anticipates incurring in the ordinary course of business of the enterprise; or
(C) The potential change in the value of services that a person provides, purchases, or reasonably anticipates providing or purchasing in the ordinary course of business of the enterprise;
(D) The potential change in the value of assets, services, inputs, products, or commodities that a person owns, produces, manufactures, processes, merchandises, leases, or sells, or reasonably anticipates owning, producing, manufacturing, processing, merchandising, leasing, or selling in the ordinary course of business of the enterprise;
(E) Any potential change in value related to any of the foregoing arising from foreign exchange rate movements associated with such assets, liabilities, services, inputs, products, or commodities; or
(F) Any fluctuation in interest, currency, or foreign exchange rate exposures arising from a person’s current or anticipated assets or liabilities; or
(ii) Qualifies as bona fide hedging for purposes of an exemption from position limits under the Act; or
(iii) Qualifies for hedging treatment under Financial Accounting Standards Board Accounting Standards Codification Topic 815, Derivatives and Hedging (formerly known as Statement No. 133); and
(2) Such swap is:
(i) Not used for a purpose that is in the nature of speculation, investing, or trading; or
(ii) Not used to hedge or mitigate the risk of another swap or securities-based swap, unless that other swap itself is used to hedge or mitigate commercial risk as defined by this rule or the equivalent definitional rule governing security-based swaps promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934.”

example, those positions that are held primarily to take an outright view on the direction of the market, including positions held for short term resale or to obtain arbitrage profits. Swap positions that hedge other positions that themselves are held for the purpose of speculation or trading are also speculative or trading positions.” Swap 2 is not held to take a view on interest rates or for short term resale or arbitrage, nor was Swap 2 done to hedge a speculative position; rather, Swap 2 is done to mitigate risk associated with Swap 1. As such, we do not believe that Swap 2 should be considered to be in the nature of speculation, investing or trading; however, clarification as to the Commission’s interpretation would be appreciated.

Does Swap 1 qualify as a hedge of commercial risk?

The answer to the question of whether Swap 1 qualifies as a hedge of commercial risk is less clear. In this case, while Swap 1 is “*a hedge of commercial risk,*” it is a hedge of Party A’s commercial risk, not Party B’s commercial risk. This leads to the question of whether the fact that Swap 1 is not a hedge of Party B’s commercial risk is determinative of whether Swap 2 qualifies as a hedge of Party B’s commercial risk. If the fact that Swap 1 is a hedge of Party A’s commercial risk is sufficient, then Swap 2 appears to qualify as a hedge of Party B’s commercial risk. Clarification as to the Commission’s interpretation regarding the following questions would be appreciated.

- Does Swap 2 qualify as a hedge of Party B’s commercial risk because Swap 1 is a hedge of Party A’s commercial risk?
- Is the fact that Swap 1 is not a hedge of Party B’s commercial risk determinative of whether Swap 2 qualifies as a hedge of Party B’s commercial risk?

The Commission may choose to exempt certain financial institutions from the definition of a “financial entity.” Any financial institutions exempt from the financial entity definition would have to be deemed to be hedging or mitigating commercial risk in order to be exempt from the mandatory clearing requirement. Clarification with respect to the questions outlined above would provide much-needed guidance with regards to whether small banks that enter into swaps with customers should prepare for central clearing notwithstanding the pending decision on the exemption for small financial institutions.

We thank the Commission for the opportunity to comment. We look forward to working with the Commission to help implement rules that serve to strengthen the derivatives market without unduly burdening hundreds of community and regional banks and the customers they serve. We are available to meet with the Commission to discuss this issue in more detail.

Respectfully submitted,

Mark J. Cvrkel
Treasurer and Chief Financial Officer
Susquehanna Bank