

Comments of Swap Financial Group, LLC on Proposed Rule regarding Amendments to Commodity Pool Operator and Commodity Trading Advisor Regulations Resulting From the Dodd-Frank Act, 17 CFR Part 4

Reference: RIN 3038-AD49

Swap Financial Group, LLC, (“SFG”) submits the following comments on the above-reference proposed rule. SFG is the leading swap advisor for end-users of derivative products in the United States. Our clients include large numbers of state and local governmental entities and non-profit organizations (many of whom are “Special Entities” in the language of the statute), in addition to non-financial corporate end-users. Contact information for SFG is: Peter Shapiro, Managing Director, 76 South Orange Ave., Suite 6, South Orange, NJ 07079. Telephone: 973-378-5500. Email: pshapiro@swapfinancial.com.

Our concerns on the proposed rule are as follows:

1. There is a great need to establish an appropriate credentialing system for swap advisors. Such a credentialing system should be rigorous, appropriate to the task of advising end-users on the use of swaps, and harmonized between the CFTC and the SEC. We fear that this need is not being addressed.
2. As currently constituted, the regs would require a firm like Swap Financial Group to register as a CTA with the CFTC, as an Investment Advisor (IA) with the SEC, and as a Municipal Advisor with the MSRB. This approach fails on two key levels. First, it imposes an undue burden on swap advisors, the vast majority of whom are small, boutique firms. Second, it fails to meet the fundamental policy need for protection of the public and the thousands of non-financial end-users who use swaps. Because no distinct, rigorous credentialing system has been proposed for swap advisors, in effect all existing CTAs would be viewed by the regulatory framework to be qualified to be swap advisors. This, despite the fact that the vast majority of CTAs have never worked with ISDA agreements or with over-the-counter derivatives. It would be bad public policy to create a situation where CTAs (or SEC-registered IA’s) with no background or credentials in providing swap advice would effectively be granted the imprimatur of the federal government to hold themselves out as approved swap advisors.
3. We believe it is imperative that the Commission work together with the SEC (and the MSRB) to develop and implement a rigorous, appropriate credentialing and registration system for swap advisors. We recognize this would create an additional burden for the regulatory bodies, and believe that the relevant self-regulatory organizations would gladly contribute to the process. To leave the existing regulatory scheme in place and thus require swap advisors, as a key intermediary in the swap markets, to fit within the existing categories of CTA and/or IA would clearly fail to meet the intent of the Dodd-Frank Act to improve the effective functioning of the swap markets.