

Geneva Energy Markets, LLC

June 30, 2011

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

RE: Capital Requirements of Swap Dealers and Major Swap Participants (RIN 3038-AD54)

Dear Mr. Stawick:

Geneva Energy Markets, LLC (“GEM”) appreciates the opportunity to comment on the CFTC’s proposed rule on swap dealer capital requirements as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”). GEM supports the goals of Dodd-Frank and believes in open, competitive, and structurally sound markets.

GEM wishes to draw the commissions’ attention to the existing, proven capital requirements for non-bank swap dealers who deal exclusively in exchange-defined and cleared over-the-counter (“OTC”) swaps, particularly in the energy markets. These existing methodologies have worked extremely well through periods of high and low market volatility and financial system stress. We believe the capital requirements in the proposed rule, however, will result in a concentration of “too-big-to-fail” entities in these markets and less efficient pricing for end-users and producers. Further, the related financial disclosure requirements are unnecessary and overly burdensome for non-bank swap dealers trading only cleared products. All of these results would run counter to the stated goals of Dodd-Frank.

GEM Background

GEM is an active participant in the energy markets, providing significant liquidity by making markets on electronic exchanges and in cleared OTC energy swaps. GEM has substantial expertise in the oil markets and related products (heating oil, RBOB, etc.), and benefits end-users and producers by providing efficient quotes across a range of complex swap and future instruments. GEM is not a bank or financial institution, does not manage or maintain customer money, and only trades exchange-listed, cleared products.

Current Capital Requirements for Cleared Swaps; Proposed Rule

Currently GEM posts capital in amounts required by its clearing firm (a futures commission merchant, or “FCM”), based on exchange margin requirements and the FCM’s rigorous risk analysis of GEM’s positions. Further, all of GEM’s positions are marked-to-market on a daily basis, so any capital deficiency is recognized immediately. This exchange and FCM

approach to capital requirements for cleared products has worked extremely well historically, particularly during the 2008 financial crisis and subsequent volatility in the oil markets.¹

As currently proposed in the CFTC rulemakings, any entity defined as a Swap Dealer would be required to have \$20 million of net tangible equity plus capital for the market risk exposure of its positions, regardless of whether those positions were cleared or not cleared and whether or not the entity has customers (76 Fed. Reg. 27806 (May 12, 2011)).

Impact of Proposed Rule

For Swap Dealers who clear all of their trades and do not have customers, this additional capital and reporting requirement only serves to provide an additional barrier to entry and will reduce the number and diversity of swap market participants without providing any additional risk mitigation to the markets or financial system. In fact, such requirements will likely result in a concentration of “too-big-to-fail” financial institutions in the cleared swaps markets, as potential new market participants will elect to trade other markets where the risk and capital requirements are more appropriately calibrated.² GEM believes these results are contrary to the goals of Dodd-Frank and negatively impact end-users through less efficient pricing and lower liquidity.

Solution

GEM suggests that Swap Dealers that are not banks, trade only cleared products and do not have customers be subject to a lesser, better calibrated standard than the proposed \$20 million net tangible equity plus risk capital. Therefore, we propose a minimum \$10 million net tangible equity threshold, but that amount would be applied to any risk capital requirements determined by the FCM.³ This approach would more appropriately balance the nominal risk such entities pose to the financial system and other market participants with the benefits of bringing more diverse entities to the cleared swaps area of the energy markets and, also avoid a “double imposition” of capital requirements at the Swap Dealer and FCM levels.

Financial Reporting

The proposed rule would also require that Swap Dealers file monthly financial statements and certain information, such as tangible net equity, would be subject to public disclosure. For Swap Dealers clearing all of their trades and with no customer funds, this additional reporting requirement provides no benefit to market participants. This requirement does provide value when imposed on entities holding customer funds, such as FCMs, as prospective customers need to be assured their funds are at well-capitalized institutions. However, for entities such as GEM

¹ See also the comment letter submitted by Geneva Trading USA, LLC (an affiliate of GEM) dated September 9, 2010 regarding Definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act (Swaps), File No. S7-16-1 for a discussion of the benefits and risk mitigation provided by the central counterparty clearing model.

² However, GEM believes the capital requirements contained in the proposed rule are appropriate for bilateral swaps that are not cleared, due to the general lack of credit and risk transparency, and inconsistent mark-to-market reporting.

³ For example, if a non-bank entity trading only exchange-listed cleared products with no customers had a risk capital requirement of \$4 million as determined by their FCM, they would still need to have \$10 million of net tangible equity in total (including the funds at the FCM) if they meet the swap dealer definition. If the FCM required \$12 million of risk capital, then the \$10 million requirement would be met once the firm posted \$12 million with the FCM.

the public reporting requirement is entirely superfluous and unnecessary, and can only provide another reason for these important market participants to disengage from the cleared swaps markets. GEM respectfully requests that non-bank Swap Dealers without customers trading only cleared swaps be exempted from the financial reporting requirements of the proposed rule.

GEM greatly appreciates the opportunity to submit our views on these important issues before the CFTC. Do not hesitate to contact us if you have any questions regarding the comments in this letter.

Sincerely,

/s/ Mark Vonderheide

Managing Partner
Geneva Energy Markets, LLC

/s/ Robert S. Creamer

President
Geneva Trading USA, LLC