



July 1, 2011

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

Re: Effective Date for Swap Regulation – Notice of Proposed Order and Request for Comment

Dear Mr. Stawick:

Better Markets, Inc.¹ appreciates the opportunity to comment on matters identified in the above-captioned notice of proposed order and request for comment (the “Notice and Request”) of the Commodity Futures Trading Commission (“CFTC”), promulgated pursuant to and in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) and the Commodity Exchange Act (“CEA”).

The proposed limited delay in rulemaking is prudent, appropriate, wise and consistent with the Dodd Frank Act, informed rulemaking and the goal of financial reform. While no one will agree with everything they have done, it cannot be disputed that the Commissioners and the CFTC staff have worked tirelessly in good faith and diligently to obtain maximum public and industry input into their fashioning of the rules required by the Dodd-Frank Act. The proposed extension is yet further evidence of their careful, thoughtful and inclusive process to ensure that the best rules and regulations are enacted to protect the public and reduce the likelihood of another financial meltdown.

The CFTC has properly and effectively responded to the July 16, 2011 effective date provisions of the Dodd-Frank Act by identifying four categories of substantive provisions of such act:

- Category 1 - Provisions that require a rulemaking, for which provisions relief is not being proposed;
- Category 2- Self-effectuating provisions that reference terms that require further definition;

¹ Better Markets, Inc. is a nonprofit organization that promotes the public interest in the capital and commodity markets, including in particular the rulemaking process associated with the Dodd-Frank Act.

- Category 3 - Self-effectuating provisions that do not reference terms that require further definition and that repeal provisions of current law; and
- Category 4 - Self-effectuating provisions for which relief is not being proposed.²

The Notice and Request addresses Categories 2 and 3. For Category 2, the CFTC provides exemptive relief until the earlier of the effective date of the subject definitions or December 31, 2011.³ For Category 3, the CFTC provides exemptive relief under Part 35 of the CFTC rules and its powers under Section 4(c) of the Commodity Exchange Act until the earlier of the repeal of Part 35 (as contemplated in the CFTC's pending proposed rules) or December 31, 2011.⁴ The relief crafted in the Notice and Request is appropriate and reasonable.

The remaining question relates to the outside date for relief of December 31, 2011. As a practical matter, the CFTC has two alternatives to such date. It could establish a later date or it could provide no final date at all. The Notice and Request clearly makes the best choice. The Notice and Request cites two reasons for choosing December 31, 2011:

- Use of a fixed date is consistent with limitations on transitional provisions contained in the Dodd-Frank Act and other precedents; and
- It allows the CFTC to assess conditions as the date nears so that it can appropriately craft further extensions if any may be necessary.⁵

It is extremely important for the CFTC to have the ability to assess conditions related to implementation as they evolve over the next six months. Implementation was the subject of a recent two-day series of roundtables jointly sponsored by the CFTC and the Securities Exchange Commission. Representatives of derivatives clearing organizations ("DCOs") and probable swap dealers ("SDs"), major swap participants ("MSPs"), swap execution facilities ("SEFs") and swap data repositories ("SDRs") joined other interested parties on the various panels. Several relevant points were made:

- There is substantial precedent in terms of software and hardware for each element of market infrastructure required under the CFTC's proposed rules.⁶ Connectivity among these elements is conceptually straightforward. A series of APIs will be established so that one infrastructure provider (for example a SEF) can "write" to another (in this case an SDR or a DCO) so that data can be

² Notice and Request at 76 FR page 35373.

³ Notice and Request at 76 FR pages 35374-5.

⁴ Notice and Request at 76 FR pages 35375-7.

⁵ Notice and Request at 76 FR page 35375.

⁶ See, for example, Joint CFTC-SEC Roundtable on Implementation Phasing for Final Rules for Swaps and Security-Based Swaps under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, May 2, 2011, Transcript ("Implementation Roundtable Transcript"), First Day, page 52, lines 3 through 13.

translated into a format usable by the market infrastructure provider which is an aggregator of trade data.⁷

- **The most important thing regulators can do is to provide a clear date for implementation.** Market participants will work toward that date and can generally achieve it.⁸ If issues arise which impair their ability to comply, these can be dealt with on a case-by-case basis.
- A key factor for DCOs is clarity on the issue of segregation of margin accounts.⁹ This will have a structural effect on DCOs and clearing, so clarity is essential.
- The business model for SEFs depends on the rapid confirmation that a swap has been accepted for clearing to provide reliable execution. This is in the context of the open access requirements of the Proposed Rules requiring DCOs to accommodate multiple SEFs. This is not a technological issue. It is a question of which side – SEF or DCO – is going to bear the risk of failed clearing of a swap that has been executed.¹⁰ Clarity on this point is critical.
- The form of the data to be collected and disseminated by the SDRs is still to be decided.¹¹ This process can range from simple trade data to more meaningful, but complex, formats for dissemination, monitoring and analysis. Simpler formats can be put in place to facilitate implementation of the CFTC's proposed rules once protocols for unique identifiers of counterparties, products and transaction type are developed.
- The need for SDs and MSPs to document relationships with customers is a real concern because of the sheer number of customers. However, the roundtable discussion makes it clear that the vast majority of trading volume derives from a very small percentage of customers.¹² Therefore, the CFTC might target temporary relief for smaller customers.

In summary, the physical work of systems and software development is relatively straightforward. The primary issues which impact implementation involve final decisions relating to how the new regulatory system will work in specific key areas. Establishing the proposed fixed date under the Notice and Request provides ample time to accomplish these tasks while also providing an incentive to reach these decisions promptly. If no deadline is established, the potential for needless delay resulting from extended, but unnecessary debate is very real.

⁷ See, for example, Implementation Roundtable Transcript, First Day, pages 132, line 9 through page 133, line 14.

⁸ See, for example, Implementation Roundtable Transcript, First Day, pages 50, line 10 through page 51, line 18.

⁹ See, for example, Implementation Roundtable Transcript, First Day, pages 79, line 3 through page 81, line 10.

¹⁰ See, for example, Implementation Roundtable Transcript, First Day, pages 37, line 22 through page 39, line 20.

¹¹ CFTC Roundtable, June 8, 2011. Swap Data Recordkeeping and Reporting Requirements.

¹² See, for example, Implementation Roundtable Transcript, First Day, pages 195, line 14 through page 197, line 21.

The outcome of these decisions on rules governing the regulatory system will evolve over the ensuing six months. If further relief is required after six additional months, the nature of that relief may be very different by the end of that period as a result of this evolution. A final date of December 31, 2011, by which final rules may or may not be in place, is entirely appropriate, providing ample time for reassessment if needed. Therefore, a later final date which does not allow for refining the terms of relief (if needed) could result in a period of unworkable or inappropriate relief from effective dates.

CONCLUSION

Timely implementation of the CFTC's proposed rules is a critical matter. The cost of doing otherwise is simply too great for the world to bear and the benefit is too great for any unnecessary delay to be justified. These proposed rules, when final, will greatly add to the protection of the public from the extraordinary risks posed by derivatives markets. Establishing no final date for the exemptive relief granted in the Notice and Request would provide no incentive to reach a conclusion on important issues on a timely basis. Assigning a date further in the future than December 31, 2011 does not provide for an informed reconsideration of the relief as the rulemaking process evolves.

We hope these comments are helpful in your consideration of the Notice and Request.

Sincerely,



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