

August 31, 2011

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

Re: RIN 3038-AC95

Dear Mr. Stawick:

National Futures Association appreciates the opportunity to provide additional comments on the Commission's proposed rulemaking regarding the registration of Swap Dealers and Major Swap Participants (SDs, MSPs and, collectively, Swap Entities) under Part 3 of the Commission's Rules and Commission Rules 23.21 and 23.22. NFA also wishes to extend its appreciation to the Commission and Commission staff for the opportunity extended to NFA to provide input and technical assistance in the development of the proposed rules prior to their adoption.

In general, NFA urges the Commission to carefully consider the impact on Swap Entities and the swap market of the implementation dates for the final Swap Entity registration rules and the substantive regulatory regulations (4s Requirements) with which the applicants must demonstrate compliance in order to become registered. Specifically, the Commission should make certain that the effective dates for the final regulations, as stated in the comments accompanying the proposed registration rules, "ensure continuity of the business operations of existing swaps entities, and ... avoid undue market disruption." As the Commission further stated, "By proposing a system of phased implementation, the Commission has endeavored to accomplish the registration of SDs and MSPs in a manner that is both efficient and minimally disruptive to on-going business." As explained below, given that the order of the phased implementation of the Commission's rulemakings may have significantly changed, NFA encourages the Commission to carefully consider how this new implementation order may impact current business and minimize any disruption thereto in the context of the registration process.

Proposed Rule 3.10

As originally proposed, in anticipation that final registration rules would be issued by July 21, 2011, Swap Entities could have begun filing registration applications on April 15, 2011. Swap Entities that filed applications before July 21, 2011 would have



Mr. David A. Stawick

August 31, 2011

been granted provisional registration upon the filing of the application¹ and would have remained provisionally registered so long as they timely demonstrated compliance with the various 4s Requirements as they subsequently were issued in final form and became effective. Swap Entities that filed applications after July 21, 2011 would have been granted provisional registration upon the filing of the application and the demonstration of compliance with any 4s Requirements that were effective as of the date of the application. Finally, provisional registration would not have been available to Swap Entity applicants that filed after all of the 4s Requirements became effective.

The Commission explained that a phased implementation of the Swap Entity registration rules was necessary because of the possibility that the final registration rules could be issued before the Definitional Rulemakings and the 4s Requirements. As the Commission stated, "From and after the effective date(s) of the Definitional Rulemakings, a person within the SD and MSP definition must file a Form 7-R, and until such time as the last of the rulemakings implementing the 4s Requirements becomes effective, such person will also be provisionally registered." Now, however, it appears that the Commission may be considering issuing final registration rules and Definitional Rulemakings after issuing some of the rules implementing the 4s Requirements.²

This possible implementation order is of particular concern because if certain 4s Requirements become effective prior to the effective date of the final registration rules and Definitional Rulemakings, then applicants may be unable to conduct business requiring registration until NFA determines that the applicants' 4s submissions adequately demonstrate compliance with the Requirements. Since an adequate review of a firm's 4s submissions may take some time, NFA's review process may cause the exact disruptive impact to business that the Commission is attempting to avoid.

Given the Commission's desire to ensure continuity of the business operations of existing swaps entities and avoid undue market disruption, NFA

¹ Subsequent to the issuance of the proposed rules, through discussions with Commission staff, it appeared likely that the provisional registration would be effective on July 21, 2011 rather than on the date of the application. However, for the purposes of this discussion, that change is not relevant.

² NFA believes that the issuance dates of the various final rules do not pose any particular issues, only the effective dates of those final rules raise concerns.



Mr. David A. Stawick

August 31, 2011

respectfully recommends that the Commission adopt the final registration rules and 4s Requirements in a manner that would meet this important policy objective. Specifically, NFA strongly encourages the Commission to make the registration rules and Definitional Rulemakings effective at least sixty days prior to the effective dates of the other 4s Requirements³. By doing so, the Commission would provide sufficient time and certainty for Swap Entities to apply for registration and be granted provisional registration before being first required to demonstrate compliance with the 4s Requirements.

As specific 4s Requirements are issued, the provisionally registered Swap Entities should be required to file timely submissions with NFA prior to their effective dates to demonstrate compliance with them, and NFA would have sufficient time afterwards to adequately review the written submissions. Once all of the 4s Requirements are effective and NFA has reviewed a firm's written submissions and determined that a provisionally registered Swap Entity has in fact demonstrated compliance with all the 4s Requirements, full registration would be granted.

NFA again appreciates the opportunity to provide additional comments regarding the registration process for Swap Entities. If you have any questions concerning this letter, please do not hesitate to contact either Michael Crowley at (312) 781-1388 or mcrowley@nfa.futures.org or the undersigned at (312) 781-1413 or tsexton@nfa.futures.org.

Respectfully submitted,

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and General Counsel

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³ NFA also notes that it continues to agree with the concept articulated in the proposed registration rules that the 4s Requirements will be phased-in over time.