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4 November 2011

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

Re: Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA (RIN 3038-AD60)

and

Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements under Section 4s of the CEA (RIN 3038-AC97; RIN 3038-AC96)

Dear Mr Stawick,

Westpac Banking Corporation appreciates the opportunity to comment on the above proposed rules. Westpac is a major Australian bank which conducts derivatives businesses across a range of products, asset classes and markets. For the purposes of responding to these rules we are assuming that we will be a Swap Dealer (SD) for at least some part of our derivatives business.

Our overarching concern is that under the proposed rules many market participants will be unable to comply within the timeframes specified and this would likely increase concentration in the derivatives market at the expense of those SDs whose activities are not of the scale of a major global dealer.

<u>General Comments (RIN 3038-AD60; RIN 3038-AC97; RIN 3038-AC96)</u>

The following general comments apply to all three proposed phasing rules:

1) Dealer to Dealer: There is no doubt that the group of major global dealers calling themselves the G14 have made significant advances in clearing and infrastructure, primarily driven by the commitments agreed amongst themselves. In line with those commitments they are clearing in excess of 90% of eligible interest rate swaps and CDS, but again this level of achievement is only

amongst themselves[1]. Whilst this group are involved in the majority of derivative market transactions, they are a minority in terms of the number of SDs that will likely be required to register with the Commission. The infrastructure development, and the volumes of the above-mentioned products now being cleared, has led to the perception, that we have encountered consistently and often, that "dealer to dealer is done". This is not the case. Global dealer to global dealer is done, and even then only on certain derivative products.

2) Concurrent requirements: Conformance with DFA and other global reforms requires substantial changes to current market practice across many aspects of derivatives markets concurrently. This issue has two aspects:

    a. Internal: An orderly transition requires that participants' business structures are not placed under undue pressure. Change management requires staged implementation, as in many cases it is the same businesses and people both implementing and being affected by the change.

    b. External: In addition to the difficulties of managing rapid change within an organisation, the change is required market wide. The ability of the market to make all changes across all participants will by its nature result in bottlenecks. We are aware of potential bottlenecks emerging already ahead of any mandatory clearing requirement, which will see a significant increase in numbers of users attempting to connect to the same infrastructure concurrently.

We therefore share the view that industry associations have put forward previously; that an orderly transition requires a phased process across market participants, requirements and products.

We acknowledge and appreciate that the Commission has noted the same concern in proposing these phasing requirements. However we are concerned that the proposed phasing still represents an outcome that will likely result in a disorderly and disruptive transition to the new regime and one that will lead to an increase in concentration in the market for derivatives.

Clearing and Trading Requirement (RIN 3038-AD60)

As noted above, existing connectivity to clearing houses (and even more so in the case of trading platforms) is limited in terms of market participants. We are concerned that a period of 90 days for mandatory clearing compliance, and potentially only 30 days for SEF connectivity may see a number of Category 1 Entities, despite their best efforts, unable to comply, excluding them from the market, and increasing market concentration.

In order to either clear or trade a given product the following general steps are required:

1. Awareness: Becoming aware of both the platform and the mandatory requirement.

[1] We acknowledge that recently membership of some CCPs has expanded. We also acknowledge that the G14 banks have been at the forefront of developing client-clearing solutions. However client-clearing is still in its infancy, and although membership of at least one CCP has recently expanded, broad CCP connectivity and usage is also in its infancy.

2. Due diligence, covering issues such as: ownership, governance, participant rules, product rules, connectivity requirements, governing laws, acceptance and affirmation procedures, failed trade procedures, and default procedures.

3. Preparation and completion of legal documents: These documents would include not only direct venue documents, but to the extent required counterparty and clearing broker documents.

4. Connectivity: Evaluation of the technology platform, establish connectivity to the CCP (and clearing broker if required), and perform robust testing of the connectivity, environment, execution & confirmation platforms.

5. Compliance, Risk and Training: Compliance frameworks will need to be adjusted to direct and monitor activity. Risk limits will need to be established. Staff will need to be trained.

6. Finance: Where applicable establish all necessary reporting, reconciliation and collateral arrangements.

The above requirements list is not exhaustive. We could not clear or trade a product until all these steps were completed.

Before a SEF can make any product available for trade the SEF itself must undergo registration and meet the core principles and other requirements which are yet to be finalised. We would suggest that the Commission introduces a regime that provides for a formal process of determining when a product is sufficiently developed to be considered to have met the standard of being available for trade to a level which would allow for a smooth and orderly application of a mandatory requirement.

It is highly likely that SEFs will focus their development work with a small group of dealers and buy-side firms. As SEFs are commercial entities, this development work could also be in confidence, and test participants may have signed non-disclosure agreements. If the mere fact that the SEF conducts live trades is sufficient for it to be considered that the product is available for trade, then given the process noted above, there will be little chance of other market participants being able to connect within 30 days. Such an environment could likely lead to a rapid concentration in derivatives execution.

We therefore suggest that the Commission proposes rules under which a product can be considered available for trade that include a requirement to contact market participants pre-launch. Such a requirement, for example, would require that the SEF, in a manner prescribed by the Commission, contact all SDs and MSPs to provide the opportunity to raise any issues that may hinder or prevent connectivity. Only when a completed analysis of responses and how they have been addressed is presented to the satisfaction of the Commission would the product then be deemed available for trade. At the completion of this process the Commission could then impose relatively short time frames for SDs and MSPs to comply with a mandatory requirement (although we would still contend that it needs to be longer than 30 days and, given our arguments above, we would suggest 90 days). For those market participants who are neither SDs nor MSPs, they should have a longer time to comply of at least 180 days.

One further point we wish to raise is that some SDs may not be able to connect to a CCP as a direct member due to membership rules, participation requirements and/or regulatory constraints. This would be

even more so the case for the other Category 1 Entities of MSPs and active funds. In these cases the satisfaction of a mandatory clearing requirement will be through client clearing.

Client clearing solutions are not as developed as the direct membership model. This will be particularly relevant for new clearing markets as they develop, which will likely see the initial clearing framework develop as a member only platform amongst the major global dealers. This has been the experience to date, and due to market structure can be expected to continue. Client clearing solutions will only be developed subsequently, potentially many months after a member only operation has been firmly established, again as the experience has been to date.

Therefore we propose that:

1. A determination that a market is sufficiently developed in order to deem that it should be subject to a mandatory clearing requirement should only take place after a robust, tested, operational client clearing solution is in place; and

2. Once clearing for a market is deemed mandatory, Category 1 Entities should have at least 180 days to connect, with all other Category timelines being extended by at least 90 days.

Finally, the Commission may also wish to consider, when deeming a product available to trade, the operational risk associated with imposing a mandatory trading requirement through only one venue.

We again appreciate the opportunity to comment, and trust that the Commission finds these comments helpful in developing final rules. We would be happy to discuss any of these issues in further detail if required.

Yours sincerely,

Kevin Nixon
Executive Director
Head of Regulatory Reform