



WOLKOFF CONSULTING SERVICES LLC

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May 11, 2012

Re: Comment on RIN number 3038-AD08; Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades

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

Via Web Site Submission

Dear Mr. Stawick,

Please accept my comment in response to the above-referenced Notice of Proposed Rulemaking concerning the establishment of minimum block sizes for swap transactions. As far as my credentials to comment, I am an independent attorney and consultant, and have been a C-Level executive of three exchanges: CEO of ELX Futures, L.P., Chairman and CEO of the American Stock Exchange, and EVP and COO of the NYMEX. At the NYMEX, I led the design and development, and obtained regulatory approval for, the first process to clear swaps at a Designated Clearing Organization, called "Clearport." I have also co-written the scholarly article titled "The History of Regulation of Clearing in the Securities and Futures Markets, and its Impact on Competition," Boston University Journal of Banking and Financial Law, Fall 2010.

In my view, the proposed block trading rules unfortunately place the need for a swap trading regime over the need for a swap clearing regime, and I believe that emphasis gets the priorities in the wrong order. The financial crisis was largely caused by reckless risk taking by the financial industry with little transparency for regulators and investors of the nature and size of the risks being taken, and inadequate capital reserves backing the risks. The crisis most certainly did not occur because market participants could not observe on a transaction by transaction basis what the pricing of a particular swap was. In fact, price was transparent to the users of the swap markets; an ability to assess counterparty and systemic risk was not available, however.

The response to the financial crisis should focus on implementing clearing for swaps, which would address the major causes of the crisis. The implementation of a broad clearing requirement for swaps can provide the position reporting, position management, independent valuation, and mutual sharing of transparent and clearly valued risks that were all missing before and during the crisis. These features are the hallmark of the existing clearing system.

Swap traders will confirm that the vast majority of swap transactions have no impact on price formation. Rather, the benchmark contracts traded on listed exchanges determine price, and the swaps take their valuation cues from the listed products. There may be an exception or two, but the proposed block rules treat swaps as if they have the same role in price formation as listed benchmark futures. They do not. A reasonable person could ask why the regulatory effort is not geared toward getting as many trades into the clearing process as quickly as possible? Instead, by taking the position that most liquid swaps cannot be executed as block trades, applying clearing to those trades will continue to await the creation of a regulatory-driven trading regimen: SEFs, SDs, MSPs, SDRs, which may prove to be beneficial, but are just not as important to the broad public interest as clearing.

The proposed block rules delay the introduction of clearing by lashing the complex trading creations of Dodd Frank to the requirement to clear off-exchange exposure. If block trade levels for swaps were made much smaller – instead of the levels in the proposed regulation, which makes block trades a rarity given the immense minimum size requirements - clearing could begin without waiting for the trading rules to take effect, now said by Commission release to be delayed until year-end.

The Clearport model manages to clear a broad swath of commodity swaps, including some very significant, liquid products, without a concomitant trading requirement. If it is the trading of swaps that Congress wants, so be it, but let us not continue to lose track of the important goals of clearing because we are trying simultaneously to achieve less important goals pertaining to the transaction side of the swap market. Trading and clearing requirements for swaps can and should be disconnected from each other.

The American public would receive the greatest protections from a cleared marketplace for derivatives, and it is within reach if the choice is made to head in that direction.

Sincerely,

A handwritten signature in blue ink that reads "Neal Wolkoff". The signature is written in a cursive, flowing style.