



August 16, 2012

Mr. David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21st Street, N.W.  
Washington, D.C. 20581

Re: Proposed Interpretive Guidance and Policy Statement: Cross-Border Application of  
Certain Swaps Provisions of the Commodity Exchange Act (RIN 3038-AD57)

Dear Mr. Stawick:

Better Markets, Inc.<sup>1</sup> appreciates the opportunity to comment on the above-captioned proposed interpretive guidance and policy statement regarding compliance with certain swap regulations (“Proposed Interpretive Guidance”), issued by the Commodity Futures Trading Commission (“CFTC”).

It is now almost 4 years since the Wall Street-created financial collapse and more than two years since comprehensive financial reform was passed. The American people and taxpayers deserve to be protected, and preventing overseas activities from threatening the American financial system, taxpayers, and economy is urgent and overdue. It is no secret that both the overseas operations of U.S. firms and the market activities of firms headquartered outside of the United States were central to the last financial crisis.

AIG remains the prime example of the problems that arise from a major U.S.-based corporation that conducts significant operations overseas. As is well known, AIG’s uncapitalized CDS business was operated out of London, but the bill for its collapse was handed to the American taxpayer.<sup>2</sup> Less well known, but equally important, it has been revealed that over half of the AIG bailout funds eventually made their way to foreign banks.<sup>3</sup> Additionally, a GAO report determined that trillions of dollars of near zero-rate loans were made by the Federal Reserve to foreign banks.<sup>4</sup> And it has been widely publicized that the single biggest borrower from the Federal Reserve’s discount window at the height of the crisis in late

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<sup>1</sup> 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.  
<sup>2</sup> See GAO, Opportunities Exist to Strengthen Policies and Processes for Managing Emergency Assistance, GAO-11-696, Jul 21, 2011, available at <http://www.gao.gov/products/GAO-11-696>.  
<sup>3</sup> [http://www.businessweek.com/the\\_thread/economicsunbound/archives/2009/03/german\\_and\\_fren.html](http://www.businessweek.com/the_thread/economicsunbound/archives/2009/03/german_and_fren.html).  
<sup>4</sup> GAO, *op. cit.*

October 2008 was Dexia, a Belgian bank.<sup>5</sup> This and other evidence makes it abundantly clear that U.S. corporate operations overseas and foreign financial institutions pose an immediate and substantial threat to the stability of the U.S. financial system and economy.

Among other things, financial reform was passed and is designed to prevent a repeat of 2008, where bailouts of foreign operations and entities put a huge drain on United States resources. The CFTC is directed by law to apply U.S. regulations to overseas firms and affiliates with a "direct and significant connection with activities in, or effect on, commerce of the United States."<sup>6</sup> This mandate must be put into effect immediately, and there is no reason for the CFTC to extend the comment period for the Proposed Interpretive Guidance or the related Exemptive Order (RIN 3038a-AD85).

In fact, various financial industry participants with vested interests are now seeking to postpone the implementation of the cross-border mandate given by Congress to the CFTC.<sup>7</sup> They are also seeking to water down the CFTC's implementation to a point at which it will be ineffectual at best and catastrophic at worst. Simply put, the American people cannot afford to wait. The CFTC should resist any and all appeals to extend the comment deadline on the Proposed Exemptive Order, and must stick to a full application of the language contained in the Dodd-Frank Act.

The majority of the commenters seeking to delay implementation of the Proposed Interpretive Guidance cite the delay between U.S. regulations and international (specifically, European) regulations. However, this is not an appropriate consideration. It is up to America's regulators to follow U.S. law and protect America's interests, and we cannot afford to wait for the rest of the world to catch up. Dodd-Frank Act implementation is already behind schedule, and the G-20 commitment to mandatory central clearing by the end of 2012 is also on course to be missed.<sup>8</sup> We have been fortunate that no crisis-level events have befallen the U.S. financial sector during this regulatory lacuna so far. However, the recent Libor scandal and the losses incurred by JP Morgan through its London operations prove beyond all doubt that unless meaningful cross-border enforcement of Dodd-Frank Act provisions is implemented immediately, we are inviting catastrophe into our system.

Not only would a failure to act in a timely and thorough manner on cross-border implementation violate the financial reform law, it would also seriously injure American interests. If the U.S. laws are not applied cross-border, then U.S. corporations will move certain operations overseas, which will then enjoy increased employment and revenue. However, when things go awry and those operations generate losses, then those losses come right back to the U.S., which will have to bail them out again if they are systemically significant. Thus, the upside goes overseas, but the downside remains with the American taxpayer. This is a great deal if you are a company or a foreign country. It is foolhardy and unwise for the U.S. and U.S. taxpayers, and must not be allowed. That is why the law mandates otherwise.

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<sup>5</sup> <http://www.bloomberg.com/news/2011-03-31/belgium-s-dexia-drew-most-from-discount-window-during-record-week-in-2008.html>.

<sup>6</sup> Section 2(i) of the Commodity Exchange Act, as added by Section 722 of the Dodd-Frank Act.

<sup>7</sup> See, e.g., letters from American Bankers Association *et al.* (July 16<sup>th</sup>), The Center for Capital Markets Competitiveness (June 27<sup>th</sup>), Societe Generale (August 8<sup>th</sup>), and ISDA (August 10<sup>th</sup>).

<sup>8</sup> [http://www.financialstabilityboard.org/publications/r\\_120420a.pdf](http://www.financialstabilityboard.org/publications/r_120420a.pdf).

Therefore, the CFTC should not countenance any extension to the comment deadline for either the Proposed Interpretive Guidance or its accompanying Exemptive Order (RIN 3038a-AD85).

Sincerely,

A handwritten signature in blue ink that reads "Dennis M. Kelleher by SWH".

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