



OFÍCIO/CVM/PTE/Nº122/2012

August 27th, 2012

Hon. Gary Gensler  
Chairman  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street, N.W.  
Washington DC 20581, USA

Re: Proposed CTFC Cross-Border Releases on Swap Regulations

Dear Chairman Gensler,

We would like to share our views and concerns regarding the impacts of cross border application of certain swaps provisions of the Commodity Exchange Act (CEA), as a result of our assessment of the proposed interpretive guidance issued by the CFTC.

1) Registration as a Swap Dealer or as a Major Swap Participant

According to preliminary data, some Brazilian financial entities will exceed the *de minimis* threshold and be required to register as swap dealers (SD) or as a major swap participants (MSP) and, therefore, to comply with the relevant rules.

The additional regulatory burden, associated with the CFTC oversight of activities already regulated in Brazil, as we have been told, might discourage Brazilian institutions from trading swaps with many active U.S. persons in our market, with potential impact on market liquidity.

The regulatory overlap might not only make it more difficult for Brazilian authorities to address local market problems or to deal with troubled institutions, but also create a burdensome environment in a time of slow global growth.

2) Substituted Compliance

The proposed approach for a substituted compliance mechanism has several limitations.

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Rather than acknowledging the comparability of the foreign regime as a whole, applications for substituted compliance must be submitted by any individual firm registered as a SD or as a MSP. This approach is likely to impose unnecessary costs and burdens on individual firms in complying with the rules under the CEA. Also, it remains unclear whether the foreign applicant will be able to dispute any of the Commission's findings in terms of comparability assessments.

With regard to G20 members, an alternative to the proposed substituted compliance approach would be a CFTC presumption that countries that have implemented the G20 commitments have an adequate regulatory regime for the purposes of "substitute compliance" or "equivalence". The various implementation reviews that the FSB, IOSCO and other bodies have set up could be used as an input in this process.

It is worthy to mention that Brazilian rules are stricter and provide more protection to stability than the requirements set forth in other jurisdictions. To mention some examples, we could point out the fact that, in Brazil:

- (i) the final beneficial owner is identifiable at all levels of the holding chain, allowing for accurate and up-to-date monitoring of exposures per market participant, on a daily basis; and that
- (ii) over 90% of all derivatives are exchange-traded and cleared at a central counterparty clearing, providing unparalleled systemic risk mitigation.

Last, the "transaction-level requirements", as we understood, are not eligible for substituted compliance. In our opinion, the relevant rules, along with the features pertaining to other jurisdictions (such as mandatory central counterparty clearing and margin requirements), can lead to inefficient results. In this sense, we find it relevant that the particularities of a foreign regime be taken into consideration also in relation to the "transaction-level requirements".

### 3) Privacy and data protection issues

Another area of concern relates to privacy and data protection issues, since substituted compliance relative to Swap Data Repository (SDR) reporting is only permitted if the CFTC is able to access the required information stored in the SDR. This approach may conflict with Brazilian bank secrecy rules set out in Law 105 of 2001. The Market Authority (CVM) has powers to share information protected by bank secrecy rules in cases of enforcement, but there

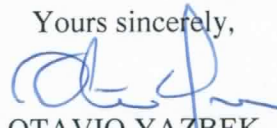


are no previous cases of information sharing in cases of market supervision. In this context, Brazilian entities may be prevented from providing more detailed information requested by the CFTC.

Even in the cases of market participants that are exempt from the registration as a SD or as a MSP, our concerns relative to bank secrecy rules remain, since SDR reporting rules also apply in such cases.

We thank you for your consideration and should you have any questions concerning the issues we have raised, please do not hesitate to contact us.

Yours sincerely,



OTAVIO YAZBEK  
Chairman