

THE FINANCIAL SERVICES ROUNDTABLE

Financing America's Economy



By Electronic Mail

September 6, 2012

Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20219
Attention: David A. Stawick, Secretary

Regarding: Clearing Requirement Determination Under Section 2(h) of the CEA

Dear Mr. Stawick:

The Financial Services Roundtable (“the Roundtable”)¹ respectfully submits these comments in response to the proposed Clearing Requirement Determination under Section 2(h) of the CEA (the “Clearing Determination”) released by the Commodity Futures Trading Commission (the “Commission”) regarding the mandatory clearing of certain swaps.²

The determination of which swaps will be subject to the clearing mandate is a critical component in the implementation of Title VII of the Dodd-Frank Act. We support the Commission’s decision to phase in clearing, both by product type and by market participant type. Further, we agree with the Commission that interest rate swaps and credit default swaps are appropriate first choices for the clearing mandate because they are already cleared to a significant degree.

However, we do have one specific concern regarding the Clearing Determination. This concern is important to many of our regional bank members that provide interest rate swaps directly linked to secured loans under a long-standing business model recognized by the swap dealer exemption for swaps in connection with loans by insured depository institutions.³ We respectfully request that the Commission provide further clarification with respect to the discussion of conditional notional amounts that appears in footnote 93. Footnote 93 states:

The term “conditional notional amount” refers to notional amounts that can change over the term of a swap based on a condition established by the parties upon execution such

¹ The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America’s economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs.

² 77 Fed. Reg. 47170 (August 7, 2012).

³ See generally Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant”, 77 Fed. Reg. 30596, 30620 (May 23, 2012).

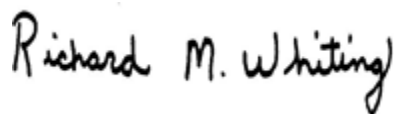
that the notional amount of the swap is not a known number or schedule of numbers, but may change based on the occurrence of some future event. This term does not include what are commonly referred to as “amortizing” or “roller coaster” notional amounts for which the notional amount changes over the term of the swap based on a schedule of notional amounts known at the time the swap is executed. Furthermore, it would not include a swap containing early termination events or other terms that could result in an early termination of the swap if a DCO clears the swap with those terms.⁴

We read this provision to mean that interest rate swaps entered into in connection with loans that allow the borrower to hedge its interest rate risk (the notional amounts of which are necessarily tied at all times to the outstanding principal amount of the loan) would not be subject to the clearing mandate if the principal amount of the loan would foreseeably vary over its term in an unscheduled or unpredictable manner. For example, a swap entered into in connection with a construction loan, where the loan would be drawn over time based on the needs of the construction project, and without a fixed draw schedule, appears to have a “conditional notional amount” that would cause the swap not to be subject to the clearing mandate. Similarly, a swap entered into in connection with a revolving credit agreement or a credit agreement that contains provisions for voluntary prepayments of the loan by the borrower based on the borrower’s circumstances also appears to have a conditional notional amount if the swap agreement provides that it will automatically adjust to the outstanding principal amount of the loan.⁵ In many cases, we believe the counterparties to such swaps will be commercial end-users who would be entitled to elect not to clear. However, we do not believe that the types of swaps we have outlined above are intended to be subject to mandatory central clearing, as such a requirement could not be efficiently applied to them, regardless of the counterparties involved. As such, we request that the Commission provide clarity on this point.

Conclusion

We appreciate your consideration of our comments on this important topic. If you have any questions, please do not hesitate to call me or Richard Foster, the Roundtable’s Senior Regulatory Counsel, at (202) 589-2424.

Sincerely,



Richard M. Whiting
Executive Director and General Counsel
Financial Services Roundtable

⁴ 77 Fed. Reg. at 47190.

⁵ Oftentimes, such adjustment would be implemented through a partial termination event, permitting or requiring the lender/swap provider to reduce the outstanding notional amount of the swap so as to protect both the customer and the lender/swap provider from over-hedging.