Please note that the comments expressed herein are solely my personal views

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12 September 2012

- 17 CFR Part 39
- RIN Number 3038-AD47
- Clearing Exemption for Swaps Between Certain Affiliated Entities

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your proposed rule: Clearing Exemption for Swaps Between Certain Affiliated Entities.

You are proposing a rule to exempt swaps between certain affiliated entities within a corporate group from the clearing requirement under Section 2(h)(1)(A) of the Commodity Exchange Act (CEA). You are also proposing rules that detail the specific conditions counterparties must satisfy to elect the proposed inter-affiliate clearing exemption, as well as reporting requirements for affiliated entities that avail themselves of the proposed exemption. Counterparties to inter-affiliate swaps that qualify for the end-user exception would be able to elect to not clear swaps pursuant to the end-user exception or the proposed rule. The proposed rule does not address swaps that an affiliate enters into with a third party that are related to inter-affiliate swaps that are subject to the end-user exception.

I generally support these proposed rules. Several commenters have stated that clearing swaps through treasury or conduit affiliates enables entities to maximise hedge efficiency and better manage and reduce corporate risk.[1] I concur with this. Inter-affiliate swaps do not generally increase systemic risk, as external counterparty exposure and interconnectedness is limited. I also agree that variation margin should be required to be paid and collected for swaps between affiliates that are financial entities.[2] This is reasonable and appropriate given the increased risk associated with such swaps.

[1] See Prudential letter to the CFTC, 2 May 2011 and ISDA-SIFMA letter to the CFTC, 14 May 2012.
[2] Financial entity is defined in section 2(h)(7)(C)(i) of the CEA.

Variation margin requirement

Proposed § 39.6(g)(2)(iv) concerning variation margin states that: "With the exception of 100% commonly-owned and commonly-guaranteed affiliates where the common guarantor is also 100% commonly-owned, for a swap for which both counterparties are financial entities, as defined in paragraph (g)(6), both parties shall pay and collect variation margin and comply with paragraph (g)(3) of this section." Furthermore, proposed § 39.6(g)(3) states that: "When both counterparties are financial entities each counterparty shall pay and collect any variation margin as calculated pursuant to paragraph (g)(3)(i) for each uncleared swap for which the exemption described in paragraph (1) is elected." I appreciate that you have limited the variation margin requirement to those financial entities that pose the greatest risk.

The variation margin requirement should have a limited impact on financial entities, as this is an accepted practice.[3] I note that this would also be consistent with key principles recently proposed by the Basel Committee on Banking Supervision and the International Organization of Securities Commissions.[4]

Yours sincerely

C.R.B.

Chris Barnard

[3] See ISDA-SIFMA letter: "The posting of variation margin limiting the impact of market movements upon the respective positions of the affiliated parties now occurs routinely in financial groups and its imposition on affiliates who transact directly with affiliated SDs/MSPs should not be unduly disruptive."

[4] See BCBS-IOSCO Consultative Document, Margin requirements for non-centrally-cleared derivatives, July 2012, available at: http://www.bis.org/publ/bcbs226.pdf
The proposed key principle under Element 6: Treatment of transactions with affiliates, states that: "Transactions between a firm and its affiliates should be subject to appropriate variation margin arrangements to prevent the accumulation of significant current exposure to any affiliated entity arising out of non-centrally-cleared derivatives."