

October 31st 2012
Submitted by email
Mr. David A. Stawick Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Ms. Elizabeth M. Murphy Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

RE: Study of Stable Value Contracts Study

Dear Mr. Stawick and Ms. Murphy:

I am writing to request that you conclude that stable value contracts do not fall within the definition of swaps and exclude them from the CFTC's and SEC's regulation as swaps.

The Dodd-Frank Act, quite appropriately, contains language mandating the regulation of credit default swaps (CDSs). Unfortunately the language of the act is incredibly broad. Depending on how the language is interpreted, it would be easy to define a swap as any contractually mandated payment that is dependent on a financial or commercial event. This would mean that executive bonus programs that are based on performance would be swaps as would many types of commission payments and sales incentives. Clearly none of these things caused the financial meltdown the Dodd-Frank Act was drafted in response to, and just like the afore mentioned examples Stable value contracts (SVCs) are another example of something that the broad language of the Act could unintentionally impact.

SVCs are not swaps in any common sense understanding of the term. They are not tradable, are not leveraged and most importantly, cannot be used to make disastrous "bets" in the way that swaps can. SVCs are what allow stable value funds (SVFs) to exist and SVFs are a key component of virtually all retirement portfolios. The contract (SVC) that guarantees capital preservation with a reasonable guaranteed rate of return even in down markets is what could be considered a "swap" under the House and Senate financial services reform bills.

SVCs might have some similar traits to swaps but when they are examined in total and compared to CDS and other swaps, they are completely different. For example unlike most swaps, which are placed on underlying collateralized debt obligations (CDOs) made up of some asset class (mortgages back securities, bonds, bond funds, etc) SVCs are supported by a broadly diversified portfolio of conservative, on average high credit quality, bond investments (typically AA to AA+). SVCs should be viewed in the context of retirement security, as a way to help protect retirees from down markets and recessions. The biggest difference between CDSs and SVCs is the fact that swaps do not require the writer of the contract to hold any of the underlying asset. When initially conceived the CDS was basically insurance for the holder of the asset

incase the value declined sharply. However speculators soon realized that there was no need to hold the underlying asset to write a swap and the CDS degenerated into a method of placing huge, unregulated, bets in the financial markets. SVCs are inherently different as the purpose is to preserve capital and to guarantee a agreed payout to retirees. No amount of financial ingenuity, or manipulation could ever turn these products into vehicles for financial speculation.

There is no question that swaps need to be regulated. While it is debatable whether or not the crash of 2008 would have happened had swaps been regulated, the dispute likely centering on whether the securitization of mortgages drove the mortgage market thus creating the bubble or vice versa, it is not debatable that the size and impact of the crash would have been much smaller had there been at least some governmental oversight on these “weapons of financial mass destruction.” This obvious need for oversight does not mean that regulation should be implemented in a blanket fashion.

Finally it should be noted that SVCs were the only asset class to consistently show returns during the worst of the financial crisis. These safe and highly used products are essential to the lives of millions of Americans as they reach retirement age. Regulating them in a similar manner as the harbingers of financial devastation that were used by Wall Street traders to make huge unsecured bets leading to the biggest recession since the great depression would be a sin.

For the above reasons, I, urge you to conclude that SVCs are not swaps.

Thank you in advance for your consideration of my comments.

Sincerely,

David Rodman
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