



B&F CAPITAL MARKETS, INC.

May 27, 2014

VIA CFTC website: <http://comments.cftc.gov>

Melissa D. Jurgens
Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Re: "Review of Swap Data Recordkeeping and Reporting Requirements," 78
Fed. Reg. 16689 (March 26, 2014).

Dear Ms. Jurgens:

B&F Capital Markets, Inc. ("B&F Capital Markets") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission") "Review of Swap Data Recordkeeping and Reporting Requirements," 78 *Fed. Reg.* 16689 (March 26, 2014) ("Request for Comment"). This Request for Comment is an outgrowth of the work of the interdivisional staff working group ("Working Group"), which was charged, among other things, with making recommendations to resolve swap data reporting challenges.¹ The Request for Comment poses a number of questions regarding the swap data reporting and recordkeeping rules "to help determine how such rules are being applied and to determine whether or what clarifications, enhancements or guidance may be appropriate."² B&F Capital Markets applauds the Commission for engaging in this comprehensive analysis of the application of these rules, including the challenges that they pose for market participants.

B&F Capital Markets believes that among these challenges is the requirement that a counterparty that enters into a swap infrequently, and only to hedge a commercial loan, must initially obtain, and maintain for the life of the swap, a Legal Entity Identifier ("LEI"). Specifically, commercial borrowers that enter in a single swap with an insured depository institution ("IDI") in conjunction with the origination of a loan from that IDI are required to obtain an LEI initially and to maintain the LEI for the life of the swap. This is a burden the cost of which is not justified by the benefit. The initial and annual renewal fee charged by a Swaps Depository Repository ("SDR") for issuance and maintenance of the LEI to such occasional swap end-user counterparties, imposes an unwarranted cost, particularly in light of the requirement that they pay a fee annually for the life of the swap. Such infrequent end-user counterparties pose no systemic risk to the financial system and information relating to their identity could be determined if ever necessary by using the internal identifiers of the IDI, the reporting counterparty. For the reasons

¹ Press Release, CFTC to Form an Interdivisional Working Group to Review Regulatory Reporting (Jan. 21, 2014), available at <http://www.cftc.gov/PressRoom/PressReleases/pr6837-14>.

² Request for Comment, at 16689.

discussed, below, B&F Capital Markets believes that the Commission should amend Part 45 of its Regulations to exempt such counterparties that meet specified conditions from the requirement to obtain and maintain an LEI.

B&F Capital Markets

B&F Capital Markets, an Ohio corporation, is a registered introducing broker that runs the swaps program for 30 regional and community banks throughout the U.S. These banks range in size from \$500 million to \$25 billion in assets. These banks generally provide their commercial borrowers with loans at a floating rate. The bank subsequently enters into an interest rate swap with the borrower so the borrower can hedge against interest rate risk and obtain financing at long-term fixed rates. Such swaps, entered into in connection with the origination of loans by an IDI, are not considered in determining whether the originating IDI is a swap dealer.³ The IDI is the reporting entity for these swaps.

B&F Capital Markets facilitates 400 to 500 new transactions each year and manages a portfolio of 1,500 to 2,000 existing transactions. We estimate that nationwide approximately 10,000 of these types of swap transactions are entered into, with a total portfolio of existing deals approaching 50,000. In accordance with Regulation 45.9, B&F Capital Markets facilitates the required reporting of these swaps to the SDR on behalf of the banks that are the reporting counterparties for these transactions.

The borrowers are usually limited liability companies owned by a single person, a family, or a few business partners, set up for specific purposes, often to finance a single asset (e.g., warehouse, plant, or office building). They only enter into a standard interest rate swap to hedge their loan's interest rate risk. More than 90% of these swaps have a notional value of approximately \$2-\$5 million, and very few are greater than \$20 million. Further, more than 90% of these persons have only entered into a single swap and only a few have entered into more than two. The average length of these swaps is about 5-7 years.

Background of Swap Data Reporting Rules and Request for Comment

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the Commodity Exchange Act ("CEA") to establish a comprehensive new regulatory framework for swaps. Amendments to the CEA included the addition of provisions requiring the retention and reporting of data regarding swap transactions. Pursuant to these newly added provisions, the Commission added Regulation 45.6 which requires that each counterparty to any swap subject to the Commission's jurisdiction to be identified with a single LEI. On July 24, 2012, the Commission issued an Order designating DTCC-SWIFT as the provider of LEIs for registered entities and swap counterparties complying with the swap data reporting regulations.⁴ The cost to obtain an LEI initially is \$200, with an annual maintenance fee of \$100."⁵

³ See, Commission rule 1.3(ggg)(5).

⁴ Press Release, CFTC Announces Designation of DTCC-SWIFT as the Provider of CFTC Interim Compliant Identifiers (July 24, 2012), available at <http://www.cftc.gov/PressRoom/PressReleases/pr6310-12>.

⁵ See, <http://www.dtcc.com/data-and-repository-services/global-trade-repository/gtr-us.aspx>. The annual fee is termed as "Annual Certification Maintenance."

In the Request for Comment, the Commission specifically requested that commenters “explain your experiences and any challenges associated with obtaining and maintaining an LEI.”⁶ As noted above, commercial borrowers of an IDI who obtain a single swap in conjunction with a commercial loan are required to obtain an LEI, the cost of which is \$200 initially and \$100 annually over the life of the swap.⁷ Requiring these small borrowers, which have entered into a swap solely to hedge the risks associated with their commercial loans, to pay an initial and annual fee to the SDR imposes a significant cost without commensurate regulatory benefits. In addition to the monetary cost, there is the time and effort required of these thousands of entities. B&F Capital Markets believes that, given the little risk that these entities pose to the financial system, it is appropriate to waive this requirement for these small borrowers. B&F Capital Markets estimates that without providing this waiver, these fees will be imposed upon approximately 1,400 individual small entities that are counterparties of B&F Capital Markets’ client banks. Nationwide, this requirement would impose an estimated aggregate cost of several million dollars a year.

Because the LEI concept was novel and developed during the promulgation of Parts 45 and 46, quantifiable information regarding the costs of obtaining and maintaining an LEI was not available and hence the CFTC did not consider such quantified costs.⁸ Because the Commission was not able to consider these costs, it was also unable to and did not fully consider the specific effects the rulemaking would have on small entities. B&F Capital Markets submits that the relief requested in this letter is appropriate in consideration of the recent data regarding the initial and annual costs of obtaining and maintaining an LEI.

LEIs are essential tools that enable the Commission to readily perform its market surveillance, oversight, and enforcement responsibilities. The Commission’s activities in this regard are focused on active market participants, particularly with respect to swap dealers, major swap participants and other significant users of swaps. With respect to the swaps entered into by the customer of an IDI in conjunction with a loan, the Commission’s regulatory objectives can be equally yet more cost-effectively achieved through use of the “Internal Identifier” by DTCC and the reporting counterparties. Using such an “Internal Identifier” the Commission would still have direct access to the identity of these swap counterparties through DTCC, as well as from the IDI upon request.

The Commission’s surveillance objectives could be readily achieved in a more cost effective manner by amending Regulation 45.6 to permit the use of an “Internal Identifier” rather than the LEI of a non-reporting counterparty in the following limited circumstances:

⁶ Request for Comment, Question 53.

⁷ See “CICI Guidance on Registration and Certification,” *available at* https://www.ciciutility.org/Attachments/CICI_Guidance_on_Registration_and_Certification.pdf.

⁸ In its consideration of the costs and benefits of the part 45 rulemaking, the Commission stated, “As the Commission has not set forth the requirements for a UPI system in the final rules, and has not yet designated such a system for use by market participants, the Commission has not identified any quantifiable costs of the LEI requirements that are not associated with an information collection subject to the [Paperwork Reduction Act (PRA)].” Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 at 2192 (Feb. 13, 2012). The PRA for this rulemaking estimated the number of burden hours associated with the information collection obligations under the rule but did not provide any estimates of the initial or annual fees associated with obtaining an LEI.

1. The exemption applies only to a borrower that is a non-financial institution using interest rate swaps to hedge against interest rate risk associated with loans issued through an insured depository institution;
2. The swap is reported by the reporting counterparty in accordance with Part 45 of the Commission's regulations;
3. The borrower has no more than two open swap transactions;
4. The net notional value of the borrower's swap transactions is \$20 million or less; and
5. The reporting counterparty will report the swaps of the covered borrowers to the DTCC with an "Internal Identifier" which will identify the counterparty to the swap.

B&F Capital Markets believes that, the above amendment to Commission Regulation 45.6 would arrive at a more appropriate balance between the cost and regulatory benefit in connection with the identification of the non-reporting counterparty to a swap issued in conjunction with the origination of a loan by an IDI.

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B&F Capital Markets applauds the Commission for creating the Working Group and publishing this Request for Comment, and for this opportunity to comment.

Sincerely,



Alistair Fyfe
President