December 2, 2010

David A. Stawick, Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581.

Re: Position Reports for Physical Commodity Swaps, RIN 3038-AD17

Dear Commission Members,

Please accept this comment responding to your request for information in connection with rulemaking for section 737 of the Dodd-Frank Act. I am writing in my own private capacity, with a view to helping formulate the best rules to achieve the requirements of the Act and meet the Commission's goals.

<u>Adapting current Special Call reporting would be the most efficient solution</u>

The CFTC reportedly already receives largely the same information that it seeks in the proposed rule through a continuing program under the CFTC's Special Call authority. The commission may be better served by adapting the program already in place and enacting it as a rule under this section of the Act, rather than promulgate a new rule that requests somewhat different information in different form from a class of reporting entities that is uncertain and may be broader. This is especially true since the proposed rule contains a sunset provision under which its requirements may only be temporary.

The proposal text states plainly that "there is no analogous reporting structure in place for economically equivalent swaps, which until recently were largely unregulated financial contracts," even though the Special Call reporting program is known to serve this role to some degree. The proposed rule unfortunately does not give any information about what the CFTC has learned from its Special Call reporting, although the CFTC does publish aggregated market reports going back to 2007 based on the information[1]. It is therefore unclear to the public in what way the information already collected is insufficient and how it would be enhanced by the implementation of the new proposed rule. Nevertheless, it seems likely that any deficiencies in the collected information could be addressed by adapting the Special Call program as to frequency or reporting thresholds or counterparty identification (eg, owner/controller through series S filings).

<u>Suggested minor changes to proposed reporting</u>

[1]See http://cftc.gov/MarketReports/IndexInvestmentData/index.htm

Aside from the strong argument as above for a very different approach, the Commission's proposal as to what information is relevant and how it should be reported is very well-considered. In general the principals behind the calculation of futures equivalents in the proposal are superior to Nymex's scheme of contract aggregation and diminishing. There are only certain changes I would suggest as below.

Metals: Many swaps will reference the London metals markets, although there are futures contracts on the same commodities traded on US futures exchanges. The proposal could offer more clarity as to how these should be handled. The simplest approach would be to consider only those derivatives that directly or indirectly reference the US futures as paired swaps, and to clarify that the London markets are not considered to have substantially the same supply and demand fundamentals.

Non-delta adjusted paired swaption positions: The meaning of this can be understood well for vanilla swaptions, but certain hybrid products or products such as variance or volatility swaps pose more challenges. The commission should clarify the purpose of this information and designate it as required only for vanilla swaptions where the concept is well-understood.

Reposibility to calculate position for cleared swaps and swaptions: Any cleared swap or swaption should be reported by both a Clearing Organization as well as a Reporting Entity. The Clearing Organization has responsibility for determining daily valuation and risk characteristics and is well-suited to report proper position figures. It is not clear whether a Reporting Entity should make an independent calculation of such figures or wait for daily publication by the relevant Clearing Organization. The commission should consider requiring a Reporting Entity to describe its position in terms of the raw quantity of such cleared swaps and allow the calculations of the Clearing Organization serve to provide a conversion into futures-equivalent position figures. If both types of entities should have calculation responsibility, then the commission should clarify whether the Reporting Entity is allowed simply to perform appropriate aggregation of the Clearing Organization's position calculations.

<u>Questions and Responses</u>

The Commission solicits comment specifically on the proposed definition of reporting entity and the sufficiency of the market visibility gained by requiring reports only from a limited set of market participants.

The definition appears suitable and should capture nearly all positions where special scrutiny is warranted. Currently there is uncertainty as to how far the definition extends beyond the entities currently contributing to the Special Call program, and it is unclear that contributions from more entities are needed.

The Commission specifically requests comment on whether this reporting level is appropriate relative to the size of positions held by paired swap counterparties.

Yes, the threshold of 50 contracts would appear generally suitable, though of course the notional value of such a minimal reportable position varies considerably over the many commodities.

Conclusion

The Commission is respectfully requested to make major adaptions to its proposed rule so that it becomes a more natural extension of the Special Call reporting program reportedly already in place. In the alternative, the Commission is requested to make additional clarification as to how to consider swaps that reference metals or other non-US contracts with approximate US equivalents, how to compute non-delta adjusted position for non-vanilla swaptions, and the basis for requiring Reporting Entities to perform position calculations of cleared products that are the responsibility of some Clearing Organization.

Best Regards,
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