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Goldman Sachs

December 29, 2010

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Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
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RE: Release No. 34-63423, File No. 4-620, Study Mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 719(b)

Goldman, Sachs & Co. ("Goldman Sachs")[1] appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the "CFTC") and the Securities and Exchange Commission (the "SEC" and, together with the CFTC, the "Commissions") on the Study on Feasibility of Requiring Use of Standardized Algorithmic Descriptions for Financial Derivatives (the "Study"). Section 719(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires the Commissions to conduct the Study to facilitate computerized analysis of individual derivative transactions and to calculate exposures. The Study will also examine the extent to which algorithmic descriptions, together with standardized and extensible definitions, may serve as a binding legal definition of derivative contracts.

Current Practices and Ontologies

Goldman Sachs has extensive experience in using various electronic communication protocols across its range of activities. Based on this experience, we believe that the type of algorithmic system that would achieve the objectives underlying the Study is one that captures extensive amounts of data and has the flexibility to adapt to product innovation and changes in industry practice. The Financial products Markup Language ("FpML") meets these criteria. As a firm, Goldman Sachs uses FpML as its normalized data representation protocol for over-the-

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counter ("OTC") interest rate, credit and equity derivative products. We use this standard as our internal trade-processing representation and, in certain circumstances, in our interactions with market participants. We have developed internal extensions to FpML to accommodate lifecycle events at a time when those were not covered by the industry protocol. The standard FpML offering now captures such trade lifecycle events.

Calculating the value of and net risk exposure to derivatives requires the full representation of the trade's economic terms as a primary input. In that respect, FpML is well-suited to provide such input for those derivatives that are fully represented in the ontology. Because Goldman Sachs relies on its own proprietary system for risk management purposes we do not have direct experience in using FpML for this functionality.

Support to the Product Innovation Cycle

The marketplace requires a data-representation protocol with the ability to support the product-evolution lifecycle inherent to OTC derivatives. FpML provides market participants with the ability to combine two alternative algorithmic representations of their OTC derivatives: (i) a complete representation of the economic terms for the standard, frequently traded derivatives that require high levels of automation and (ii) a generic representation of certain key economic fields for the more customized and complex derivatives that are traded in very low volumes.

Goldman Sachs has developed a formal product-innovation lifecycle that organizes the evolution of OTC products from a generic FpML representation for new and/or bespoke trades, to a full FpML product representation as the market for such trades matures, becomes more standardized, and grows in volume.

We recommend that the Study take into account the benefits of such an evolutionary model for algorithmically describing derivatives. This approach is consistent with current market practice in credit derivatives, where DTCC supports a "gold record" for standard products represented using FpML, and a "copper record" for the more complex derivatives. FpML offers the requisite flexibility as regulators and market participants work together to standardize derivatives, make markets more transparent, and mitigate systemic risk.

Making Computer Descriptions Legally Binding

Goldman Sachs supports making certain computer readable descriptions of financial derivatives legally binding representations of trades provided that the following conditions are satisfied: (i) the trades are electronically affirmed by both parties or matched by an electronic system; (ii) all material economic terms of the trades are included in the affirmation or matching process; and (iii) all amendments to such trades are electronically affirmed or matched through the same system. Additionally, in order to be legally binding, the descriptions should be required to reference the relevant master agreement for additional terms not included in the representation. The DTCC Trade Warehouse CDS "gold record" format is an existing example of such a model. Allowing computer descriptions to be legally binding in these circumstances will provide market participants with an appropriate level of legal certainty while eliminating significant operational burdens associated with tracking paper confirmations.

Recommendations

In sum, we believe that the marketplace will benefit from using one open standard and that FpML is that standard. We respectfully recommend that, in connection with the Study, the Commissions consider in the approaches that (i) use the FpML product descriptions for standard OTC derivatives; (ii) use the generic representations to report complex OTC derivatives, alongside the paper confirmation; and (iii) leverage FpML to normalize the definition of listed and cleared OTC derivatives, in association with an industry-wide product codification.

In addition, we suggest that the Commissions utilize the Study to consider developing an industry protocol for organizing the evolution of the reporting standard from the generic to the full representation, as products mature and volumes grow.

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We would be pleased to discuss any of the comments or recommendations in this letter with the Commissions' staffs in more detail.

Sincerely,

David M. Inggs
Managing Director
Goldman, Sachs & Co.