



December 2, 2010

Via E-mail: swaps.reporting@cftc.gov

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

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

Dear Mr. Stawick:

National Futures Association ("NFA") appreciates the opportunity to comment on the Commission's proposed rules regarding position reports for physical commodity swaps. At the outset, NFA encourages the Commission to carefully consider comments from swap industry participants regarding the proposed reporting regulations that the Commission deems reasonably necessary for implementing and enforcing aggregate position limits for physical commodity derivatives, including swaps that are deemed economically equivalent to specified futures contracts. Below NFA addresses one important issue raised in subsection D of Section II of the Federal Register release whereby the Commission specifically requests comments relating to "any role that self-regulatory organizations could play in gathering positional data on paired swaps."

As you are aware, for the last 28 years NFA has supported the CFTC's regulatory oversight of the futures industry and has helped the CFTC fulfill its regulatory obligations, including through specific delegations of various functions by the CFTC to NFA. Therefore, if the Commission desires, NFA is more than willing to continue exploring what role NFA could play in gathering positional data on paired swaps. Just a few months ago—in mid-August 2010—NFA and CFTC staff held preliminary discussions about possible ways in which NFA could act as a utility with respect to swap transactions.¹ Specifically, our discussions focused, in part, on monitoring for compliance with aggregate position limits recognizing that the CFTC will need data regarding both futures and paired swaps from contract markets, SEFs and swap data repositories. The Commission has a well-established infrastructure to obtain the necessary information regarding exchange-traded futures. With respect to paired

¹ As a follow-up to these discussions, NFA made written submissions to the Commission dated August 25, 2010 and September 22, 2010.



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swaps, though, the Commission will need information from SEFs, contract markets trading swaps and swap data repositories. NFA could certainly play an important role in gathering and consolidating relevant data from those varied sources and transmitting that information to the Commission. While to date we have not attempted to detail exactly how NFA would perform this function we certainly have presented Commission staff with a conceptual framework for NFA to perform this role.

Specifically, NFA previously recommended that to monitor for compliance with established aggregate position limits, each person trading cleared paired swaps through an SEF or DCM or uncleared paired swaps reported to a swap data repository must have a unique identifying number. These numbers would be the functional equivalent of the NFA ID number that NFA assigns to each registrant. Persons registered as swap dealers or as major swap participants could receive their NFA ID number through the registration process. For non-registrants trading swaps, CFTC rules would require either an FCM, swap dealer, SEF or swap data repository to obtain from NFA an identifying number for each customer whose trades it will process. To avoid confusion over similar names, a social security number or tax identification number would have to be provided when available, similar to the process for obtaining NFA ID numbers for registrants. For traders that are self-clearing members of an exchange, the unique identifying number would have to be obtained by either the appropriate DCM or clearing organization.

Information regarding futures trading on DCMs would continue to be provided to the Commission by the exchanges. The Commission could require each SEF, DCM trading swaps and swap data repositories to provide NFA with a daily electronic record of paired swap trades that included the positions traded and the customer account identifying number. NFA would receive this information and consolidate positions for customers trading paired swaps on multiple forums according to guidelines set by the Commission and transmit the information to the Commission. The Commission could then combine this information with the data received from the exchanges to monitor overall compliance with aggregate position limits. In performing this function, NFA would not be acting as an SRO but as a delegee of the Commission, just as we do now with respect to registration, CPO/CTA disclosure documents, and the filing of IB/FCM financial statements.

Construction of the systems to implement the utility functions described above would be a significant undertaking but is well within NFA's demonstrated capabilities. Over the years NFA has designed and built virtually every filing and



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reporting system used at NFA, including systems for registration, trade practice and market surveillance, financial reporting by FCMs, IBs and CPOs, and CPO and CTA disclosure documents. NFA would be able to leverage its existing technology to design and build the new systems that would be required to perform these additional responsibilities. For example, the surveillance component of NFA's trade practice and market surveillance system and NFA's forex trade reporting system which accepts and consolidates feeds from numerous sources could be adapted to perform similar functions regarding paired swaps and aggregate position limits. Based on our experience, we are confident that NFA could build the systems necessary to perform these functions within one year of being formally requested to do so.

Obviously, while any undertakings by NFA in this area would be subject to approval by NFA's Board, we are confident that the Board would accept this additional delegation. The delegation, however, would have to clearly define NFA's responsibilities, would have to ensure that NFA would receive the data in an acceptable format necessary to consolidate positions for customers trading paired swaps on multiple forums and perform any requested surveillance, and would have to allow NFA to recover its costs from fees that have been approved by the Commission. Each time NFA has taken on new areas of responsibility, for example, with respect to forex or trade practice surveillance for electronic exchanges, we have attempted to operate as a utility, charging fees and membership dues that are set to recover NFA's costs over time. We would take the same approach with respect to swap transactions.

Once again, NFA appreciates the opportunity to comment in response to the Commission's specific request for comments relating to "any role that self-regulatory organizations could play in gathering positional data on paired swaps." If the Commission elects to pursue a self-regulatory solution for how to accomplish position reporting for paired swaps, then NFA is more than willing to engage in further discussions regarding this issue.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom Sexton", written over a light blue horizontal line.

Thomas W. Sexton
Senior Vice President and
General Counsel