

August 27, 2012

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

Re: Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act

Dear Mr. Stawick,

CFA Institute¹ appreciates the opportunity to comment on the Cross-Border Application of Certain Swaps Provisions (the “Proposal”) of the Commodity Exchange Act (“CEA” or the “Act”) as proposed by the Commodity Futures Trading Commission (the “Commission”). The proposal considers the extraterritoriality of certain provisions of the Act.

CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the integrity and accountability of global financial markets.

As a global organization of investment professionals, CFA Institute is particularly concerned with issues that create systemic turmoil and failure within financial markets. Consequently, we are strongly supportive of efforts to 1) increase transparency of the swaps and derivatives markets globally; 2) to carefully consider, manage and regulate central clearing of swaps; 3) to trade standardized and standardizable swap instruments on transparent exchanges; and 4) to ensure global coordination in the adoption and implementation of swaps regulations to reduce the frequency and effect of regulatory arbitrage.

Executive Summary

CFA Institute supports the goal of the Proposal, namely to provide interpretation on when global firms will be required to register with the Commission as a Swap Dealer or a Major Swaps

¹ CFA Institute is a global, not-for-profit professional association of more than 110,000 investment analysts, advisers, portfolio managers, and other investment professionals in 139 countries, of whom nearly 101,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 136 member societies in 58 countries and territories.



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Participant and subsequently adhere to regulations on clearing, trade execution, and trade reporting for swaps transactions. Complying with these regulations means adhering to the recommendations of the Financial Stability Board (“FSB”) created by the G-20 as described in its “Implementing OTC Derivatives Markets Reforms” report (the “Report”). We also support the proposed guidance to permit substitution of swaps regulation from non-U.S. markets, instead of requiring compliance with the U.S. regulation so long as such regulation is consistent with the recommendations of the Report. Finally, we support the establishment of memorandums of understanding (“MOUs”) between the Commission and non-U.S. firms applying for information-sharing and enforcement arrangements with regulators in different markets to codify acceptance of comparability and substitution of regulation.

At the same time, we are concerned that differences in the implementation schedules of the Commission and non-U.S. regulation could create problems for the Commission and important participants in these markets. We suggest that the Commission accommodate the interim registration of non-U.S. firms as Swap Dealers and Major Swap Participants while they wait for implementation of comparable regulation in their home markets. Moreover, we believe the Commission should avoid short cuts in the due diligence needed to implement the Proposal in order to achieve their deadlines.

We discuss these matters more fully in the section below.

Discussion

We recognize the need for U.S. regulators to work closely with their global counterparts on derivatives regulatory reform. We are aware that the Commission worked as one part of the FSB to establish the recommendations (the “Recommendations”) included in the Report, which were agreed to by the G-20 in October 2010. The 21 Recommendations address practical issues that authorities may encounter in implementing the G-20 Leaders’ commitments.

The FSB’s third progress report on implementation of the Report, issued in June 2012, noted that U.S. implementation of the Recommendations is advanced relative to other major markets. Regulators in some markets have expressed their intention not to comply with all of the recommendations, while others are waiting to see how the U.S. and Europe act before deciding how to proceed.

Consequently, the Commission is creating regulations that will protect the U.S. economy and mitigate systemic risks while not knowing if and how other G-20 regulators will proceed. In order to achieve the derivatives reforms agreed to in 2010, we believe global regulators must act multilaterally.



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Interpretative Guidance

The Proposal includes interpretive guidance that is intended to help firms determine how and when other regulatory regimes can be deemed comparable and, thus, can act as a substitute for U.S. regulation. In particular, firms may seek comparable foreign regulatory status for their home market regulators as it relates both to regulation of the entity and regulation of specific transactions.

We support the proposal to allow a firm to substitute the regulations of non-U.S. markets where the regulations demonstrably adhere to the FSB's Recommendations. We also support the establishment of Memorandums of Understanding (MOUs) for the purpose of market surveillance, information sharing, efficiency, and reduced redundancies. We believe global cooperation is crucial to achieving the goals established by the G-20.

We are nevertheless concerned with the timing for implementation of the proposed interpretive guidance. While we agree that it is important to allow for substitute comparable regulatory regimes and MOUs, we are concerned that the Commission's deadlines for implementation will occur before some other markets have established potentially substituting regulations. Under these circumstances, a firm may have to register as a Swap Dealer and Major Swap Participant, even though it would not need to register once its home market established an MOU with the Commission and is determined to have a comparable regulatory regime in place.

A possible solution for such situations would be for the Commission to provide a grace period for firms that are intending to establish a substituting regulator that would postpone registration until such time that it is clear that the foreign regulatory substitute is considered comparable. We believe it is critical that the Commission deal with the practical operational issues of firms creating compliance programs when it is not clear if their home supervisor will in fact become substituting regulators. Ideally, the Commission would not force firms to expend significant resources to try to achieve registration with the Commission when their home regulator will become comparable within a relatively short amount of time.

Also, if there is no harmonization with regulation globally, there is the potential for confusion and may possibly hurt global liquidity. For example, if a U.S. based firm enters into a swap with a European firm, it must trade on a Swaps Execution Facility (SEF) or similar exchange; however, it is not yet clear where the European firm will have to trade. In this instance, the trade will fail to occur. It is critical that regulations on cross-border swaps will not ruin the liquidity in the market and that the global regulators work together to synchronize regulation.



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We also have concerns about the process by which the interpretative guidance is being adopted and implemented. In particular, we have seen courts reject rules adopted by other U.S. regulatory agencies due to their failure to do the appropriate due diligence necessary to consider the costs and benefits of their rules. We fear the same could occur in this instance, given the controversy the interpretation may create for some firms. Consequently, we urge the Commission to conduct appropriate due diligence to avoid further delay in the adoption and implementation of meaningful regulations and guidance relating to cross-border swaps.

Conclusion

We appreciate the opportunity to comment on the Commission's Proposal on certain swaps provisions. Should you have any questions about our positions, please do not hesitate to contact Kurt N. Schacht, CFA at kurt.schacht@cfainstitute.org or 212.756.7728; or Beth Kaiser, CFA, CIPM at beth.kaiser@cfainstitute.org or 434.951.5614.

Sincerely,

/s/ Kurt N. Schacht

/s/ Beth Kaiser

A handwritten signature in black ink on a light pink rectangular background. The signature reads "Kurt N. Schacht" in a cursive script.

Kurt N. Schacht, CFA
Managing Director, Standards and
Financial Market Integrity
CFA Institute

A handwritten signature in black ink on a light grey rectangular background. The signature reads "Beth Kaiser" in a cursive script.

Beth Kaiser, CFA
Director, Capital Markets Policy
CFA Institute