

June 10, 2011

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

Re: Implementation and Phasing Schedule for Requirements under Title VII of the Dodd-Frank Act

Dear Mr. Stawick:

MarkitSERV¹ appreciates the opportunity to comment on the order and timing for the implementation of the rules proposed by the Commodity Futures Trading Commission (“**CFTC**” or the “**Commission**”) under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**DFA**”).²

Introduction

MarkitSERV is an independent facilitator, servicing the global derivatives market and making it easier for derivatives market participants to interact with each other. MarkitSERV provides trade processing, confirmation, matching and reconciliation services for swaps and security-based swaps across regions and asset classes. MarkitSERV also provides universal middleware connectivity for downstream clearing and reporting. With over 2,000 firms currently using the MarkitSERV platform, including over 21,000 buy-side fund entities, its legal, operational, and technological infrastructure plays an important role in supporting the swap markets in the United States and globally.

As a service and infrastructure provider to the domestic and international swaps markets, MarkitSERV supports the objectives of the DFA, and the Commission’s objectives of increasing transparency and efficiency, reducing both systemic and counterparty risk, and identifying any market manipulation or abuse.

Executive Summary

MarkitSERV believes that the Commission should establish its schedule for implementation of rules proposed under the DFA in the order of registration, regulatory reporting, clearing, real-time reporting, and trading.

In particular, we believe that:

- The Commission should first accept applications for swap data repositories (“**SDRs**”), derivatives clearing organizations (“**DCOs**”), and swap execution facilities (“**SEFs**”). Registering and identifying these entities will be an important first step toward establishing the infrastructure on which the rest of the rules will rely. The Commission should also consider pre-registering these entities to facilitate a timely transition to the new market design provided by the DFA.
- Because several rules proposed by the Commission cannot be appropriately finalized without an analysis of a significant amount of swaps data, the Commission should initially encourage participants

¹ MarkitSERV, jointly owned by The Depository Trust & Clearing Corporation (DTCC) and Markit, provides a single gateway for OTC derivatives trade processing. By integrating electronic allocation, trade confirmation and portfolio reconciliation, MarkitSERV provides an end-to-end solution for post-trade transaction management of OTC derivatives in multiple asset classes. MarkitSERV also connects dealers and buy-side institutions to trade execution venues, central clearing counterparties and trade repositories. In 2010, more than 19 million OTC derivatives transaction sides were processed using MarkitSERV. Please see www.markitserv.com for additional information.

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

to voluntarily submit data to SDRs and collect and use such data for further analysis. Thereafter, the Commission should require parties to comply with regulatory reporting requirements, which will permit the Commission to analyze the entire market.

- Following the regulatory reporting, the Commission should implement the clearing requirement, because both real-time reporting and the execution requirements are dependent on the determination of which swaps should be subject to mandatory clearing.
- The Commission should then require parties to comply with real-time reporting requirements because this data will be useful to market participants executing on a SEF and will be useful to SEFs when building and optimizing their product offering.
- Finally, the Commission should review clearing and other observed data to determine what swaps should be subject to the execution requirement.
- All of these requirements should be phased in by category of market participant and by asset class.

Comments

We believe that the DFA and rules proposed pursuant to the DFA contain a degree of natural order for implementation in that it would be practical to implement the rules in a certain order because some components build or depend upon other components. As further explained below, we believe that the Commission should analyze currently available data about swap transactions before implementing other rules in order to gain a better perspective on the market.

1. Registration, Physical Connectivity and Infrastructure

We suggest that the Commission finalize and implement the rules regarding registration of SDRs, DCOs, and SEFs as a first step toward implementation of all other requirements.

We note that much of the established connectivity between counterparties, execution venues, Trade Repositories, and CCPs is already, or will be, provided by third party middleware suppliers. Permitting connectivity through middleware providers to continue, rather than requiring each SDR, DCO, and SEF to individually establish connectivity with each other, will be critical for the prompt completion of this step. For example, if there are 20 SEFs and 5 DCOs that cannot use middleware providers for connectivity, they would have to build out 100 individual connections. Moreover, each of these connections would have to be individually tested and maintained. However, if the same SEFs and DCOs were to use one of the existing middleware providers to establish connectivity with each other, they would only have to build out a much smaller number of connections. In this way, middleware providers will significantly reduce the amount of time and cost necessary to have infrastructure ready and operational. We therefore urge the Commission to permit SDRs, DCOs, and SEFs to connect with each other via third party middleware providers.

Also, the Commission should consider, as an interim step, the process of pre-registration of the various infrastructure providers. If an entity, such as a Trade Repository, a CCP, or an electronic execution platform is already operational and can certify that it can and in fact does meet all the requirements applicable to SDR, DCO, or SEF registration under the DFA and the proposed rules, such entity should be able to provisionally become pre-registered or pre-qualified to perform its statutory duties. This procedure would facilitate a smooth transition to the new market design. After the rules become finalized, and the compliance period commences, these infrastructure entities should then be able to formally resubmit their applications and become formally registered as such.

2. Permit a Voluntary Reporting Period

Once SDRs are registered with the Commission, we believe that the logical next step is for the Commission to encourage parties to voluntarily report their swaps transaction data to SDRs. Data reporting to the Commission

will provide the Commission with the significant amount of market data needed before it can determine which swaps should be subject to the clearing mandate,³ which ones are “available for trade,”⁴ and what are the appropriate thresholds for block sizes.⁵ For example, in determining which swaps should be subject to the clearing mandate, the DFA requires the Commission to consider the following factors: the existence of significant outstanding notional exposures; trading liquidity; the size of the market for such contract; the effect that mandatory clearing will have on competition; and the effect that the insolvency of a DCO or DCO members will have on the contract.⁶ Even for contracts that are already listed for clearing on a DCO, the Commission will require a significant amount of data to meet these statutory obligations.

We believe that a voluntary reporting period would be an effective way for the Commission to initially obtain such information without disrupting the market. Mandatory reporting as an initial phase could be disruptive to the market because many parts of the market are not ready yet to comply with the type of reporting envisioned by Part 45 or Part 43 of the proposed regulations. For example, interest rate swaps (“*IRS*”) are typically reported to regulators as monthly batch reports designed to provide summarized market data rather than granular information.⁷ Furthermore, many smaller dealers do not currently report swaps data to all of the existing Trade Repositories, and it may take them a considerable amount of time to establish the connectivity necessary to do so. Therefore, implementing mandatory reporting as an initial step, we believe, would actually delay the Commission’s receipt of data and would potentially impose significant costs and delays on implementing the DFA. Because we believe that a significant amount of data would be reported under a voluntary reporting regime, our proposed reporting phase would permit the Commission to gain access to a significant amount of data regarding most of the more liquid products.

We also believe that, during this voluntary reporting period, the reporting parties should not yet be subject to the time periods established for regulatory reporting.⁸ First, some of the infrastructure that will eventually help the reporting process to run smoothly will still be under development. Second, while large market participants may be able to quickly comply with the reporting time requirements for certain swaps, many other market participants will require considerable time before they can do so. For example, fund managers currently often allocate swaps among sub-funds by the end of the day, and they may need to implement significant business changes in order to be in a position to comply with time requirements applicable to regulatory reporting,⁹ confirmation,¹⁰ and processing.¹¹ Indeed, we believe that the use of this voluntary reporting period would be helpful for the Commission in determining whether the proposed time requirements for mandatory reporting to SDRs are best suited and achievable for their statutory purpose. Additionally, we note that any mandatory time requirements applicable to the voluntary reporting might discourage parties from reporting at all.

³ See CEA Section 2(h)(1)(A).

⁴ See CEA Section 2(h)(8).

⁵ See Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. 76140, 76174 (published Dec. 7, 2010) (to be codified at 17 C.F.R. § 43.5).

⁶ See CEA Section 2(h)(2)(D)(ii).

⁷ See *ISDA Picks DTCC to Create New Interest Rate Trade Repository*, Securities Technology Monitor, May 11, 2011, available at <http://www.securitiestechologymonitor.com/news/dtcc-trade-information-repository-isda-27889-1.html> (explaining that the current IRS repository was designed “to provide regulators with monthly reports which summarized market volumes for OTC interest rate derivatives.”).

⁸ See Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. 76574, 76582-83 (published Dec. 8, 2010) (requiring primary economic terms to be reported to an SDR as soon as technologically practicable following execution if executed on a SEF or DCM, and within 15 or 30 minutes if executed off of a SEF or DCM, and requiring confirmation data to be reported to an SDR as soon as technologically practicable following confirmation for cleared swaps and within 15 minutes for uncleared swaps).

⁹ See *id.* at 76599-76601 (setting forth the timing for regulatory reporting).

¹⁰ See Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 75 Fed. Reg. 81519, 81531 (published Dec. 28, 2010) (to be codified at 17 C.F.R. § 23.501);

¹¹ See Requirements for Processing, Clearing, and Transfer of Customer Positions, 76 Fed. Reg. 13101, 13109 (published March 10, 2011) (to be codified at 17 C.F.R. § 23.506).

Finally, we note that, during this period of voluntary reporting to SDRs, the Commission could encourage, but not require, parties to execute transactions on registered SEFs and clear through registered DCOs if such entities are available and able to accept swaps for execution and clearing respectively.

3. Require Regulatory Reporting

We believe that the regulatory reporting obligations¹² should be among the earlier requirements implemented. Mandatory regulatory reporting has to precede the clearing mandate because only the data obtained through such reporting will enable the Commission to have access to the full set of data demonstrating all of the nuances of the market. This, in turn, would provide the Commission with an accurate picture of the market, which will be essential to determining which swaps should be subject to mandatory clearing. We also note that real-time reporting must follow regulatory reporting because the block trade thresholds, which have important implications for real-time reporting, cannot be determined without sufficient and accurate market data.¹³ We believe that the data from complex, bespoke, and large trades in particular will be critical to establishing appropriate block size thresholds that will not be harmful to market activity. Also, the trading requirement can only be implemented once the complete dataset of swaps transactions has been analyzed by the Commission to decide which swaps should be classified as “available to trade.”

We urge the Commission to phase in these regulatory reporting requirements by category of market participant and by asset class. Some categories of market participants will need more time to comply with the reporting requirements than others. Therefore, the reporting rules should be phased in so that, for example, only dealer-to-dealer transactions are covered at first. This way, smaller market participants will not be restricted from participation in the marketplace due to an inability to comply with the reporting requirements.

We also believe that these requirements should be phased in by asset class. Swaps in different asset classes are electronically processed and reported to repositories to different extents, both of which will affect the ease with which swaps can be mandatorily reported. Several other factors should also be considered regarding how to phase-in reporting by asset class. For example, we believe that products such as CDS could be phased in early because of the limited number of market participants, the smaller variety of products, and the relatively high degree of post-trade automation, while Commodity swaps should be phased in later because these factors do not apply to them.

4. Phase-In the Remaining Rules

After implementing the reporting rules, we believe that the Commission should phase-in the clearing, then real-time reporting, and then execution rules.

i. Clearing

Utilizing the data from voluntary and mandatory regulatory reporting, the Commission could make a sound determination as to which swaps should be subject to mandatory clearing.¹⁴ Practically speaking, we believe that the clearing mandate should be implemented before mandated real-time reporting and SEF execution because it is arguably most important from a systemic risk perspective. In addition, though, the DFA implies

¹² See Swap Data Reporting and Recordkeeping, Requirements, 75 Fed. Reg. at 76600-01 (to be codified at 17 C.F.R. § 45.3).

¹³ See Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. at 76161-62 (the “Distribution test” would “require a registered SDR to create a distribution curve to see where the most and least liquidity exists based on the notional or principal transaction amounts for all swaps within a category of swap instrument,” and the “Multiple test” requires an SDR to have data regarding the mode, median and mean transaction sizes of a particular type of swap).

¹⁴ See CEA Section 2(h)(2) (requiring the Commission to review each swap, or any group, category, type, or class of swaps to determine whether they should be required to be cleared).

that the Commission must make a determination that swaps are subject to the clearing mandate before real-time reporting rules or SEF execution rules can apply: DFA Section 727 sets forth the rules applicable to real-time reporting, which are different for swaps that are subject to the mandatory clearing requirement and those that are not.¹⁵ Similarly, DFA Section 723(a) states that only those swaps which are subject to the clearing mandate must be executed on a SEF, and then subject to further determination by the Commission that SEF trading is appropriate.¹⁶ Therefore, we believe that the Commission needs to determine what swaps must be mandatorily cleared before they can be reported in real-time or mandatorily executed on a SEF.

ii. Real-Time Reporting

We believe that the logical step after implementing the clearing mandate would be to require real-time reporting. Real-time reporting will be of benefit to mandatory SEF execution because it will provide post-trade transparency, which will aid in more effective competition for trades executed on a SEF. Additionally, by requiring real-time reporting and mandatory clearing before mandating SEF execution, SEFs will be able to build their product offering based on the products that are available for clearing and based on publicly-available information. Finally, we believe that SEFs will need the real-time reported data to optimize their product offering and satisfy the regulatory requirement to offer effective execution techniques for each type of swap (e.g., they will assign specific swap categories to open-order book execution, while other swaps that trade less frequently would be better suited to a request-for-quote execution mechanism).

We also note that, practically speaking, we do not believe real-time reporting should be implemented simultaneously with regulatory reporting because real-time reporting is more demanding than the regulatory requirements,¹⁷ so phasing in regulatory reporting and then real-time reporting will cause less market disruption.

iii. SEF Execution

Once the reporting, clearing, and real-time reporting regimes are established, we believe that the Commission should implement the execution requirement. As described above, there are practical and technical reasons why SEF execution should be implemented at this stage. SEFs, as the gateway for many market participants, will need to be connected with DCOs and SDRs, and will likely want to provide real-time data to their members. Thus, all of these functions should be live and tested by the time that SEF execution is mandated. In addition, the Commission must implement the clearing mandate before any execution mandate since only swaps which are mandatorily cleared can be subject to the execution mandate.¹⁸

We appreciate that SEF execution is an important aspect of the DFA regime, but we do not believe that implementing the execution mandate at this stage will impede any of the DFA's goals. As explained above, we would advocate for market participants to be able to execute transactions on SEFs before SEF execution is mandated if SEFs are registered and able to accept swaps for execution. If market participants are permitted to do so, they will likely execute transactions on SEFs before doing so is mandatory when SEF execution is more efficient than traditional methods of execution. Therefore, this mandatory execution stage will only truly affect those trades where SEFs have not already attracted customers.

¹⁵ See CEA Section 2(a)(13)(C) (the Commission "shall require real-time public reporting" for swaps subject to the clearing mandate, while the Commission "shall require real-time public reporting [for swaps not subject to the clearing mandate] *in a manner that does not disclose the business transactions and market positions of any person*") (emphasis added).

¹⁶ See CEA Section 2(h)(8).

¹⁷ Compare Swap Data Reporting and Recordkeeping, Requirements, 75 Fed. Reg. at 76600-01 (to be codified at 17 C.F.R. § 45.3) (requiring regulatory reporting within 15 minutes, 30 minutes, or 24 hours following execution and confirmation, depending on the method of execution and confirmation), with Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. 76140, 76172 (published Dec. 7, 2010) (to be codified at 17 C.F.R. § 43.3) (requiring real-time reporting "as soon as technologically practicable.").

¹⁸ See CEA Section 2(h)(8).

iv. Phasing for All Rules

Similar to the regulatory reporting requirements, we believe that the clearing, real-time reporting, and execution requirements should be phased in by category of market participant and by asset class. We note, though, that the Commission's "Concepts and Questions Regarding Phased Implementation of Effective Dates for Final Dodd-Frank Rules" states that DCOs and SEFs "must provide for client clearing and access *at the same time* for *all participants* who wish to use the platform."¹⁹ We understand that the DFA imposes open access requirements on DCOs and SEFs,²⁰ but we ask the Commission to clarify that the Commission does not intend to *require* all market participants to use DCOs and SEFs at the same time. Instead, once DCOs and SEFs are registered with the Commission, they should be required simply to permit all market participants that wish to use the platform to do so.

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MarkitSERV appreciates the opportunity to comment on the implementation schedule, and would be happy to elaborate or further discuss any of the points addressed above.

In the event you may have any questions, please do not hesitate to contact the undersigned or Gina Ghent at gina.ghent@markitserv.com.

Sincerely,



Jeff Gooch
Chief Executive Officer
MarkitSERV

Cc: Chairman Gary Gensler
Commissioner Michael Dunn
Commissioner Bart Chilton
Commissioner Jill Sommers
Commissioner Scott O'Malia

¹⁹ See CFTC Concepts and Questions Regarding Phased Implementation of Effective Dates for Final Dodd-Frank Rules p. 2, available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/staffconcepts050211.pdf> (emphases added).

²⁰ See CEA Sections 5b(c)(2)(C)(iii); 5h(f)(2)(B).