

COMMODITY MARKETS OVERSIGHT COALITION

An Alliance of Derivatives End-Users & Reform Advocates

June 8, 2010

HOUSE-SENATE CONFERENCE PRIORITIES FOR DERIVATIVES REFORM LEGISLATION

About Us

The Commodity Markets Oversight Coalition is an alliance of consumer advocates and commodity producers, marketers and end-users that rely on derivatives to hedge commodity price fluctuations and to insulate their businesses and consumers from risk. For three years we have called for legislative reform of derivatives markets to strengthen oversight, transparency and stability, address regulatory inadequacies in the existing derivatives markets, and limit the role of financial speculation in regulated, over-the-counter (OTC) and off-shore markets.

We commend Senate Banking Committee Chairman Christopher Dodd, Senate Agriculture Committee Chairwoman Blanche Lincoln, House Financial Services Committee Chairman Barney Frank and House Agriculture Committee Chairman Colin Peterson for their hard work on derivatives reform legislation. We also commend the members of both chambers for their work and for making such progress toward real reform.

Conference Priorities

We are hopeful conference will be able to work out differences between the derivatives titles of the Senate-passed “Restoring American Financial Stability Act of 2010” (S.3217) and the House-passed “Wall Street Reform and Consumer Protection Act of 2009” (H.R.4173) so as to safeguard the American people from excessive speculation, instability and abuse in the derivatives markets.

Below is a list and description of our policy priorities, for your consideration during conference:

1. End-User Exemption to Central Trading and Clearing

Both versions of the proposed legislation contain language to require standardized derivative transactions to occur on regulated exchanges or swap execution facilities and to be cleared through a designated clearing organization. This requirement is critical to the effectiveness of the legislation and must be retained in the final version of the bill.

Both bills also seek to exempt actual commercial “end-users” of physical commodities from these exchange trading and clearing requirements. Our coalition does not oppose this concept but one of the most critical issues surrounding derivatives reform is that the end-user exemption remains narrowly applied to ensure that financial speculators and other entities that are not end-users of physical commodities are unable to qualify for the exemption. Therefore, **we strongly prefer the approach taken by the Senate.** It specifically excludes financial entities from qualifying for the trading and clearing exemption and it restricts use of the exemption to entities that are hedging *bona-fide* commercial risk while clearly prohibiting the exemption from being used to hedge balance sheet risk as allowed by the House bill.

2. Position Limits

Both bills direct the Commodity Futures Trading Commission (CFTC) to establish aggregate speculative position limits for all contracts, regardless of where they are traded. It is vital that this responsibility remains mandatory and not devolve to a mere grant of authority to the CFTC. The Senate bill includes Swap Execution Facilities in the aggregate position limits language and also uses the language “settles against, or in relation to” when describing contracts on foreign boards of trade covered by the aggregate position limits. We support both of these provisions. The House bill would direct the CFTC and SEC to set position limits on individual trading venues and also includes the concept of “economically equivalent contracts.” These are two strong provisions that should be retained in the final bill.

3. Transparency

The Senate version of the bill requires both real-time and post-trade public reporting for most derivatives transactions, including those transactions involving commercial end-users. This information is vital for both the regulators and the public at large and should be retained in the final version of the bill.

4. Definition of a Major Swap Participant

Both versions of the legislation define who is a ‘major swap participant’ based on whether their positions in swaps are substantial enough to affect the financial system. We prefer the Senate definition because it specifically includes highly-leveraged financial entities and looks at actual counterparty exposures and not ‘net’ exposures.

5. Definition of a Swap Dealer

Both versions of the legislation define who is a ‘swap dealer’ and impose statutory obligations on those persons to register, meet business conduct standards, minimum capital and margin requirements, etc. The Senate legislation has a slightly broader definition of a swaps dealer. However, the House version makes it clear that a swaps dealer is someone who “regularly engages in the purchase of swaps and their resale *to customers* in the ordinary course of business...” [Emphasis supplied.] Generally, because it better clarifies that end-users are not swaps dealers simply by virtue of engaging in swaps, **we prefer the definition in the House bill** and encourage its inclusion in the final version of the bill.

6. Conflicts of Interest

It is vital that clearinghouses’ efforts to list swaps for clearing are not thwarted by their largest members – the swap dealers. For this reason, it is vital that regulators have the authority to prevent manipulation of exchanges and clearinghouses. The Senate version of the bill directs the CFTC to establish limits on the amount of control that large banks, financial institutions, swap dealers and major swap participants can have over designated contract markets and swap execution facilities if setting limits will mitigate systemic risk and reduce conflicts of interest. This is an important provision that should be retained.

7. Regulation of Foreign Exchange Swaps

Our coalition supports requiring foreign currency swaps to be placed on an exchange, centrally cleared, and reported to regulators in real time. While neither version of the legislation unequivocally requires all of these to occur, the Senate version takes the stronger, and preferred, approach. It would allow these transactions to avoid exchange trading and clearing only if the Treasury Secretary affirmatively announces to Congress, in writing, that they should be exempt. Furthermore, it requires these trades to be reported and imposes business conduct standards on dealers of foreign exchange swaps.

8. Other Important Issues

Our coalition also strongly supports:

- The expanded anti-manipulation authority granted to the CFTC in the Senate legislation;
- The enhanced whistle-blower protections found in the Senate legislation; and
- Prohibitions against trading commodities using “insider information” that appears in the Senate version of the legislation.

**For more information on our coalition
Visit**

www.nefactioncenter.com/commoditymarkets.php

Primary Coalition Contacts:

James Collura, New England Fuel Institute (NEFI)
jimcollura@nefi.com – (202) 584-0160

Sherri Cabrera, Petroleum Marketers Association of America (PMAA)
scabrera@pmaa.org – (703) 351-8000

Ryan Stroschein, Air Transport Association (ATA)
rstroschein@airlines.org – (202) 626-4122

Adam White, White Knight Research & Trading
Adam.white@whtknt.com – (404) 551-5859