

September 22, 2011  
Submitted by email

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

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange  
Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

RE: Study of Stable Value Contracts Study

Dear Mr. Stawick and Ms. Murphy:

On behalf of Morley Financial Services, Inc., and the over 9,000 retirement plans who we work with who have invested in stable value funds, I urge you to conclude in your study of stable value contracts that stable value contracts do not fall within the definition of swaps and exclude them from the CFTC's and SEC's regulation as swaps.

Briefly, stable value contracts are not swaps since they are not leveraged, not tradable, not freely assignable and cannot be cleared. Stable value contracts also differ from swaps since they are supported by an underlying broadly diversified portfolio of conservative, on average high credit quality bond investments (typically AA to AA+) with average durations of three years.

Importantly, stable value contracts are not exercisable since defined contribution participants transact at contract value, which is participants' principal and accumulated interest. Stable value contracts should be viewed in the context of retirement security and ERISA's 37 years of experience in protecting and upholding this security. They should not be viewed as swaps or financial instruments that contributed to the financial crisis.

Further, stable value contracts are not unregulated or under-regulated products. Stable value contracts have a strong history of regulation and supervision by state insurance commission and the National Association of Insurance Commissioners (NAIC); the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation; and the Department of Labor and similar governmental counterparts on the state level. These regulators have also applied their oversight to evaluate and ensure that stable value contracts do not pose systemic risks to the integrity of the U.S. financial system and our retirement system.

Finally, the definition of "swap" in the Dodd-Frank Act is extremely broad. Read literally, a swap would include any payment that is dependent on a

financial or commercial trigger (subject to a few exclusions). So, read literally, all company bonus programs that are based on company performance would be swaps—and would likely be illegal, since most employees are not eligible contract participants. Similarly, most commission payments would be illegal, as would sales incentives. There are literally thousands of examples of benign everyday practices that would fall within the literal words of the definition. Obviously, Congress did not intend to ban substantially all company bonus programs, commissions, sales incentives, and hundreds of other everyday practices. On the contrary, Congress intended that the Commissions would interpret the definition of a swap in accordance with the intent of the legislation. During the legislative process, officials within Congress and the Administration repeatedly stated informally that they never intended stable value contracts to be swaps. The Commissions should clarify that the Dodd-Frank language will not be read so broadly as to effectively eliminate access to stable value, contrary to any purpose underlying the Dodd-Frank Act.

The 9,000+ plans that we work with rely upon stable value funds' capital preservation combined with consistent positive returns. Stable value funds historically have provided a 100 to 200 basis points premium over money market funds. In 2009, 2010 and 2011, stable value funds have returned over 3%, which is 100 times more than money market funds. Stable value funds' lack of correlation with stocks provides greater diversification benefits to 401(k) plan participants than other conservative fixed income alternatives. For these reasons, it is imperative and in the public interest that stable value contracts held by stable value funds are excluded from swap regulation.

Morley supports the comments filed by the Stable Value Investment Association, which further explain in depth why stable value contracts are not swaps and why it is in the public interest to ensure that stable value contracts are not subject to swap regulation.

For these reasons, Morley Financial Services, Inc., urges you to conclude that stable value contracts are not swaps.

Thank you in advance for your consideration of our comments.

Sincerely,

Tim Stumpff  
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Morley Financial Services, Inc.  
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