



National Association
of Federal Credit Unions
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February 22, 2011

Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

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

RE: Proposed Rule on Definition of “Swap Dealer”; File Number S7-39-10

Dear Ms. Murphy and Mr. Stawick:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions (FCUs), I am writing to you regarding the joint proposed rule by the U.S. Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) on the definitions of “swap dealer,” “security-based swap dealer” and related terms. *See* 75 FR 80174 (December 21, 2011).

The proposed rule implements provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) related to the registration and regulation of swap dealers, security-based swap dealers and related terms. Entities or persons deemed to meet the definition of swap dealer would be subject to the CFTC registration and regulatory requirements while those deemed to be security-based swap dealers would be subject to SEC’s. A security-based swap includes swaps based on a single security or loan. Among other things, swap dealers and security-based swap dealers would be subject to rigorous recordkeeping and real-time reporting requirements.

The Dodd-Frank Act provides a key exception to the definition of “security-based swap dealer.” Specifically, a security-based swap dealer “does not include a person that enters into security based swaps for such person’s own account, either individually or in a fiduciary capacity, but not as a part of regular business.” *See* Dodd-Frank Act at § 761(a), 15 U.S.C. § 78c(a)(71)(c).

NAFCU believes that Federal Home Loan Banks (FHLBs) fall within the statutory exception and strongly urge the Agencies to exempt these entities explicitly by

regulation. We do not believe that it is the intent of the Dodd-Frank Act as regards regulation of derivatives to hamper the ability of FHLBs to provide derivatives services; rather, the key tenant of the law is to provide oversight and regulation of derivative speculators. FHLBs do not engage in derivative speculation.

FHLBs have increasingly been important partners for credit unions as credit unions seek to meet their mission of providing low-cost financial services to their members. A key service that FHLBs provide is risk management, and swaps have proved to be important risk management tools. If the Agencies decline to exempt FHLBs, it is possible, if not likely, that swaps will become far too costly and potentially unavailable for credit unions as a tool to hedge against risk either because the increased costs will be passed on or because FHLBs will simply stop using swaps as risk management tools.

NAFCU also believes that the Agencies should provide an explicit exemption for credit unions, although it is NAFCU's position that credit unions would not be covered under the proposed definitions. To the extent that credit unions conduct swap dealings themselves, it is for their own account and also not as part of their "regular business." Under the agencies' own interpretation of this statutory exception, "persons who enter into swaps as a part of a 'regular business' are those persons whose function is to accommodate demand for swaps from other parties and enter into swaps in response to interest expressed by other parties." *See* 75 FR 80174, at 80177. Without a doubt, it is not a credit union's function to accommodate demand for swaps.

If the Agencies do not provide an explicit exemption for FHLBs, FHLBs could determine that the costs and burden associated with being deemed a swap dealer or a security-based swap deal outweigh the benefits. Under these circumstances, credit unions will have no or very limited access to the derivatives market. Similarly, if a credit union were to engage in derivative activities itself, it would find it far too costly to deal in swaps unless exempted from the proposed definitions.

Finally, NAFCU requests the opportunity to meet with appropriate agency staff to discuss the potential ramifications of the proposed rule on credit unions.

NAFCU appreciates the opportunity to comment on the proposed rule. Should you have any questions, please contact me by telephone at (703) 842-2268 or by e-mail at ttefferi@nafcu.org.

Sincerely,



Tessema Tefferi
Associate Director of Regulatory Affairs