From: secretary <secretary@CFTC.gov>
Sent: Wednesday, October 13, 2010 8:52 AM
To: SwapDataRepositories <SwapDataRepositories@CFTC.gov>
Subject: FW: Swap Data Repositories Registration Standards and Core Principle Rulemaking, Interpretation & Guidance
Attach: SNL NOPR Comments.pdf

From: Kevin Berents (SNL: 303-501-1693) [mailto:KBerents@snl.com]
Sent: Tuesday, October 12, 2010 2:32 PM
To: peswapreport
Subject: Swap Data Repositories Registration Standards and Core Principle Rulemaking, Interpretation & Guidance

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September 13, 2010

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

The Honorable Mary Schaprio
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Comments to the CFTC and SEC for consideration in support of price transparency in the swap data, swap data repositories and real-time reporting roundtable. CFTC HQ- September 14th 2010

Dear Chairman Gensler and Chairman Schapiro:

These comments are respectfully submitted to the U.S. Commodity and Futures Trading Commission and the U.S. Securities and Exchange Commission in response the notice of proposed rulemaking issued by the CFTC and the SEC to address the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

I wanted to address the roundtable in my capacity as Director of a price analysis organization that is also an approved provider of industry price marks. SNL Energy is a division of SNL Financial our principal office being Charlottesville, Virginia. SNL provides energy industry information and analysis, including market price reporting and analysis, publishing of both news and market price indicators/marks, and research and analysis of the US power, natural gas and coal industry. SNL's prices, indices, marks and assessments are regularly used to write energy industry contracts, swaps and hedging transactions that mitigate risk in energy commodities markets. We do not enter into swaps or transactions of any kind and are prohibited by our corporate charter from holding positions in our covered industry areas both as a corporation and as individuals. This alleviates conflicts of interest.

I have some simple comments. I fully support the efforts of the CFTC, and the SEC to address market efficiency through reforms of data repositories and speculative positions on energy contracts.

- Reform of the markets, particularly energy commodity markets, cannot proceed without due attention to pricing and pricing transparency. This is vital to market reform as it addresses the entire value of the energy commodity derivatives industry. Without reasoned price discovery the swap market would be severely hampered.

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- To truly rectify the issues around energy commodity markets, specifically power, natural gas, coal oil and their derivatives, an independent, transparent and auditable system needs to be established.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act) clearly outlines the need for a price/data repository. A consortium of forward thinking industry companies has established a working, viable and operable system – the Energy Data Hub (EDH)- for just this purpose. The EDH is a hub for transaction data that is fully auditable, compliant and open to regulatory scrutiny. It provides a data repository for anonymous, validated, standardized transactions data of all types and tenors.

The issues that must be addressed are apparent to industry participants. These include:

- Transparency- in data reporting and price analysis;
- Responsibility- parties responsible for reporting and price analysis;
- Price Data Repository- Auditable, Compliant Systems like the EDH;
- Conflict of Interest- eliminating where possible conflicts in price generation and supply.

To illustrate why these issues are apparent to the industry, I will outline industry concerns related to price and price discovery and how those prices are generated, analyzed, and sustained, and the importance of those prices in setting the structure for an operable market system. In turn, this practical approach addresses transparency, responsibility, compliance and audit-ability, and conflict of interest. These are the core requirements for a successful regulatory mechanism.

Transparency

- Develop and support increased transparency and confidence around prices and pricing marks,
- Continue the use of price marks, where appropriate,
- Support and promote the use of price repositories, like the Energy Data Hub, to address long term transparency.
- Address the underlying flaws in the current system. We can't argue for change in the commodities and derivatives markets and turn a blind eye to the flawed system that allows market price abuses to occur.

Price transparency in energy commodities markets can be an amorphous concept. In some cases, markets are completely opaque and prices are determined not through an independent third party system of price reporting, but through closed negotiations on terms and conditions loosely predicated on some notion of value. In other cases, markets are significantly transparent with independent prices supplied by third parties that are use as industry standards. Indeed, there is a market evolution that we need to acknowledge and foster.

The new regulatory mechanism **must develop and support increased transparency and confidence around prices and pricing marks.** It should continue to allow the use of price marks and support and promote the use of price repositories, like the Energy Data Hub, to address long term

transparency. Fortunately, there is a still a degree of competition in industry price marks. That said, one company has a dominant position in oil and natural gas pricing reporting and one that is maintained in a pseudo-monopolistic fashion. More chilling is that certain large exchanges operate in a direct conflict of interest to market transparency. You can't simultaneously be promoting a service that is price dependent and volume dependent when you make your money on the facilitation of the trade and the services that go into the facilitation of that trade.

Markets evolve. There should be a logical evolution from existing price discovery processes to one that is more comprehensive and independent. This is an important step to take because dependence on a particular price mark overtime increases the propensity for manipulation. I have yet to hear an argument from the dominant price reporting provider advocating change to the status quo. Yet change the status quo we must. We are here to address reform to the swap and derivative markets then we cannot overlook reform to price reporting and analysis.

To keep the status quo and the pseudo monopolistic conditions that exist in current price marks is an inherently flawed position. The industry cannot be argue for change in the commodities and derivatives markets and turn a blind eye to the flawed system that allows market price abuses or the potential for abuses to occur in the first place.

Responsibility

Price analysis and price assessments still have a place in energy commodity markets and the energy industry. Discovery of prices at relatively illiquid trading locations, by capturing traded prices from industry participants, and the price analysis and price assessment process, minimize risk and prevent price collapse by allowing the participants to be appropriately aware of market conditions. This improves confidence; the more liquid the mark, the less prone is the commodity traded to risk and price volatility. This is a valuable service to customers and the industry.

Responsibility for price discovery and analysis rests with independent market analysts. It is not the responsibility of exchanges or agencies to discover prices. Exchanges provide a powerful and useful service, but price reporting is a by-product of the exchange or of the brokerage process. I reference the CFTC's ruling that certain contract or transactions do not constitute significant price discovery (FR Doc 2010-17736[1]). Exchange and brokerage prices are useful and important as they represent the end point of a negotiation. These prices should be used in conjunction with other pricing inputs to try and provide a full picture of the commodity price landscape. Price reporting or price analysis groups like SNL Energy are the parties with responsibility for price analysis as they are not conflicted due to business volume.

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[1] FR Doc 2010-17736 COMMODITY FUTURES TRADING COMMISSION

Orders Finding That the NP-15 Financial Day-Ahead LMP Peak Daily Contract; SP-15 Financial Day-Ahead LMP Off-Peak Daily Contract; SP-15 Financial Swap Real Time LMP Peak Daily Contract; NP-15 Financial Day-Ahead LMP Peak Daily Contract and NP-15 Financial Day-Ahead LMP Off-Peak Daily Contract, Offered for Trading on the Intercontinental Exchange, Inc., Do Not Perform a Significant Price Discovery Function. Source: http://www.cftc.gov/LawRegulation/FederalRegister/FinalRules/2010/2010-17736.html

On the contrary price analysis groups are encouraged to provide greater transparency to yield a more inclusive price.

Price/Data Repository

- There is a commercially sustainable system in place right now in the Energy Data Hub. The EDH needs regulatory support in order for companies to take steps to submit their anonymized prices to the central repository.

The process for price analysis is open to manipulation. Prices are sent to an email box or chat system and aggregated. We trust the parties submitting the prices and use a well established methodology to winnow the prices into confined standard deviation to yield a price and volume based on reported trades. The system is not perfect, but it works. Manipulation of prices, whether perceived or real, needs to be avoided. To have a few price marks derived in this way for nascent or illiquid points is reasonable. They provide a service and a beneficial result.

To have all of the price marks for electricity, natural gas and oil derived this way is no longer acceptable, or advisable. I reference the attempts to manipulate natural gas industry prices though false price and volumes and counterparty information submittals. (CFTC- Website- Press Release: 5258-06, Press RELEASE: PRI 5411-07)

The regulatory system needs to change to support independent price/data repositories like the Energy Data Hub. I ask that the CFTC and SEC send a signal to energy companies and energy consumers that an independent data repository is supported as a mechanism for increasing transparency around commodity and derivatives pricing. There is a commercially sustainable system in place right now in the Energy Data Hub. EDH needs support to allow companies to take the measures appropriate to use that system.

Key attributes of the Energy Data Hub are: overwhelming energy industry support, stable consortium, centralized data storage house and processing facility, standardization, best-in-class technology standards and data security. Each transaction is validated, made anonymous, and standardized.

Audit-ability, compliance and oversight must ensure adequate system operation and regulatory oversight. The CFTC and SEC are charged with responsibility to oversee these markets. They will not be able to do so without access to the data repository. While the repository must ensure anonymous transactions, the regulatory oversight agencies must have access to trace, and build a case for manipulation. Open access to such a system is a requirement.

Conflict of Interest

Conflicts of interest or perceived conflict of interest must be alleviated. It is unrealistic to think that exchanges can provide a market service and supply prices without the prices being conflicted. Exchanges have a commercial benefit is widespread distribution of their own prices as they advertise their service and attract more business.

Yours sincerely,

Michael Carter
Director
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