

**From:** Ed Barron  
**Sent:** Tuesday, September 20, 2011 9:08 AM  
**To:** Fajfar, Mark  
**Subject:** \*\*\* Cooperative Finance Corp

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However, I would like to have Rich Larochelle and I do a brief phone call with you regarding the National Rural Utilities Cooperative Finance Corporation (CFC).

As you know from their detailed comments, CFTC has special authority\*/ under Dodd-Frank as to how they should treat the rural utilities and the entities they own such as the National Rural Utilities Cooperative Finance Corporation. We met with the Federal Reserve and they are aware under Dodd-Frank (in a meeting and in CFC's comments to them) that CFTC could use that authority to exempt CFC transactions from margin and other requirements as CFC has pointed out in their filings with CFTC. The Federal Reserve is aware that they would likely defer to the CFTC's approach (under the statutory law) in close coordination with CFTC.

However, CFC is worried that other co-ops are recommending language to the CFTC that would NOT apply to CFC nor be helpful to CFC – that general language could be very good policy and be beneficial and consistent with the law.

However, CFC believes that Congress intended – by specifically including the exemptive authority -- for CFC, at the very least, not to be treated worse of (disadvantaged) as compared to other co-ops which were not referenced in Dodd-Frank. The CFC comments provided to CFTC provided CFTC with specific language for you to consider – the general language being provided by other co-ops may not be applicable to CFC.

That is what Rich and I would like to discuss with you -- in 15 minutes or less on the phone. Would that work?

Thanks, Ed Barron (Russell & Barron)  
Representing CFC

As a reminder (the below is a short summary of the CFTC 772(f) exemptive authority regarding CFC) which the Federal Reserve is certainly aware of:

**The CFTC proposal on definitions recognized that some “electricity services are provided as a *public good* rather than for profit” and referred to Federal Power Act and to the non-profit, public power systems such as rural electric cooperatives . . . .” That preamble invited comments on “whether there are special considerations, including without limitation special considerations arising from section 201(f) of the Federal Power Act, related to non-profit, public power systems such as rural electric cooperatives . . . .” and the entities they own.**

The CFTC proposal referred to the “exemptive authority in section 722(f) of the Dodd-Frank Act. . .” That public interest waiver section provides that “Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) (as amended by section 721(d)) is amended by adding at the end the following:

“(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into— . . . “(C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).”

Those entities include rural electric cooperatives and the entities they own which includes the non-profit CFC.

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“A cooperative shall be exempt from clearing and margining requirements if (i) it does not use swaps for speculative purposes and (ii) its net out-of- the-money swap exposure does not exceed 15% of its equity, calculated to include subordinated certificates held by its members.”

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The term “Commercial End User” includes a non-profit tax-exempt cooperative that is not a depository institution and the majority of whose members are non-profit tax-exempt cooperatives that are not financial entities.”

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Proposed Exemption for swaps entered into by a “Federal Power Act Entity Cooperative”

“Pursuant to the authority in 7 U.S.C. § 6(c), an agreement, contract or transaction that is entered into between (i) a non-profit, tax-exempt cooperative that provides financing to its members, the majority of whom are entities described in section 201(f) of the Federal Power Act (a “Federal Power Act Entity Cooperative”), and (ii) an appropriate person, as defined in 12 [6?] U.S.C. § 6(c)(3), is exempt from the definition of “swap” under the Act, provided the Federal Power Act Entity Cooperative does not enter into such agreement, contract or transaction for speculative purposes, but solely to hedge or mitigate a commercial risk, including interest rate and currency risk.”

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Proposed Inclusion of CFC in Definition of Commercial End User eligible for Exemption

“The term ‘Commercial End User’ includes a tax-exempt cooperative that is not a depository institution or credit union and the majority of whose members are nonprofit tax-exempt cooperatives that are not financial entities. Such a cooperative is not subject to margin or clearing requirements, provided that it does not enter into swaps for speculative purposes.”

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Proposed Inclusion of Cooperative entities in Definition of Commercial End Users eligible for Exemption:

“The term ‘Commercial End User’ shall include a cooperative (i) that is not a depository institution or credit union, (ii) that does not use swaps for speculative purposes and (iii) whose aggregate net out-of-the-money swap exposure does not exceed 15% of its equity, calculated to include subordinated certificates held by its members. Such a cooperative shall be exempt from clearing and margining requirements.”

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DRAFT FOR DISCUSSION PURPOSES -- Options for De Minimis Exemptions

Number of Swaps per Year:

- Fewer than 15

Amount of Net Out-of-the Money Swap Exposure:

- aggregate net out-of-the-money swap exposure does not exceed \$300 million.

Net Out-of-the Money Swap Exposure as percent of Equity:

- aggregate net out-of-the-money swap exposure does not exceed 15% of its equity, calculated for a cooperative entity to include subordinated certificates held by its members.

Notional amount of swaps entered into during a 12 month period

- less than \$3 billion.

“An entity shall be exempt from clearing and margin requirements if (i) it does not use swaps for speculative purposes and (ii) it meets a de minimus test (AS SPECIFIED ABOVE).