

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001



C. THOMAS KEEGEL
General Secretary-Treasurer

202.624.6800
www.teamster.org

November 2, 2010

The Honorable Mary L. Schapiro
Chairman
The United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

The Honorable Gary Gensler
Chairman
The United States Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Dear Chairpersons Schapiro and Gensler:

The International Brotherhood of Teamsters (IBT) appreciates the opportunity to comment on the definitions contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). The IBT represents 1.4 million hardworking men and women in North America. Teamster affiliated benefit funds hold approximately \$100 billion in assets and are active institutional investors in the capital markets. We must not underestimate the damaging role that reckless swaps and opaque derivatives trading played in our nation’s financial crisis. Such trading turned the wreckage of the crash of the U.S. housing market into a global economic recession. The financial institutions and their lobbyists trying to weaken the Dodd-Frank Wall Street Reform and Consumer Protection Act through the regulatory process are the very same people who tried both to derail passage and to weaken the Act. They are trying to get another bite of the apple in the regulatory process and the latest example is found in their suggested definitions for “commercial risk.”

We believe how “commercial risk” is defined is relevant in determining whether an entity is a “major swap participant” as well as whether a swap is exempt from the clearing requirements under the Dodd-Frank Act. The Dodd-Frank Act defines a “major swap

participant” as any entity, other than a swaps dealer, that “maintains a substantial position in swaps for any of the major swap categories as determined by the Commission, excluding positions held for hedging or mitigating commercial risk.” Furthermore, the definition includes entities that engage in significant swaps trading and are systemically dangerous or highly leveraged financial entities. The institutions that can be categorized as major swap participants under Dodd-Frank are subject to registration, record keeping requirements, business conduct and prudential requirements.

The clearing requirement, as stated in Dodd-Frank “does not apply to a swap if one of the counterparties to the swap (i) is not a financial entity; (ii) is using swaps to hedge or mitigate commercial risk; and (iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into noncleared swaps.” Therefore, the definition of “commercial risk” will have a direct bearing on whether a large portion of the over-the-counter derivatives market clears and trades as was intended by Congress when it passed the Dodd-Frank Act. As a result, we are particularly concerned by recent arguments made by financial industry groups that “commercial risks” should be defined to include financial risk where a commercial firm or a bank is hedging financial risk.

We are deeply concerned by the recent arguments made by financial industry groups that “commercial risks” should be defined to include financial risk where a commercial firm or a bank is hedging financial risk. For example, the International Swaps and Derivatives Association argued in a comment letter filed on September 20th that “commercial risk” should include anything “of, pertaining to, or characteristic of commerce... including financial risks.” Similarly, the American Bankers Association, in a September 20th comment letter, recommended that “‘commercial risk’ be interpreted broadly enough to include financial risk for depository institutions.”

The argument that transactions engaged in by commercial firms that are hedging financial risks should be exempt clearly contradicts the intention of Congress. If the Commission were to interpret the legislation as industry groups have suggested, the effect would be that all swaps traded by non-financial entities would be exempt from clearing and trading requirements. The term “commercial risk” would be rendered meaningless. If that was Congress’s intent, however, it would have simply exempted commercial entities from the clearing requirement altogether, an approach that Congress explicitly rejected. In fact, Congress rejected language in earlier versions of the legislation that would have exempted firms that were hedging “operating or balance sheet risk,” because of the concern that this would have made firms hedging financial risk eligible for the exemption.

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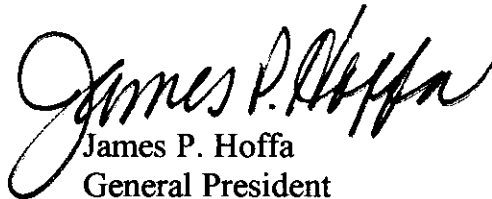
The Commission should also reject the arguments in favor of adopting a broad definition of “commercial risk” to allow financial institutions using swaps to hedge financial risks to avoid regulation as major swap participants. The broad definition recommended by the American Bankers Association would not only provide the means whereby financial entities such as hedge funds and insurance companies could escape regulation as major swap participants but it would also result in a broader exemption from central clearing.

We urge the Commission to adopt a narrow definition of “commercial risk.” References to “commercial risk” in the Dodd-Frank Act are clearly intended to apply to commercial hedgers. Regulators should, therefore, interpret the term “commercial risk” to include only those risks that arise as a result of companies’ exposure to fluctuations in prices of raw materials they use to manufacture products or fluctuations in the prices of products they manufacture.

The industry lobby tried and failed to get an expansive end-user exemption included in the legislation. The Teamsters Union, urges you to reject the arguments made by the financial industry lobby in an attempt to maintain the opaque, unregulated over-the-counter derivatives market. We have seen the catastrophic effects on working families, businesses and the U.S. economy of this market without proper regulation and transparency, and we must not miss this opportunity to bring much needed reform. The Commission must interpret “commercial risk” very narrowly to ensure that the legislation fulfills its promise to move the vast majority of derivatives out of the shadows and into the transparent, regulated market.

We appreciate the opportunity to comment on the definition of “commercial risk” in Title VII of the Dodd-Frank Act. If you have any questions, please contact Louis Malizia at (202) 624-8100 or lmalizia@teamster.org.

Sincerely,


James P. Hoffa
General President

JPH/lm