
FT.COM

Quick View: The US swaps dispute sideshow

By **Stephen Foley**

The Commodity Futures Trading Commission appears to have found a knight in shining armour, though the petty battle it faces is anything but heroic.

The Depository Trust & Clearing Corporation has ridden to the side of the US regulator, offering to help it defend a lawsuit filed last week by CME Group over the CFTC's new rules on the reporting of swaps trades.

The CME accused the regulator of promulgating "arbitrary and capricious" rules, of exceeding its authority and of failing to properly weigh the costs against the benefits of its actions. It is only the third time in the CFTC's history that it has been sued by an industry participant.

Except that the real target of the CME's suit seems not to have been the CFTC but rather the DTCC and the real aim seems not to be saving the world from a capricious regulator so much as carving out as much market share as possible for the CME in the new world of swaps trading.

The DTCC asked late on Monday to be allowed to join the case as an "intervenor", or defendant, and to file an answer to the CME's claims.

It is to be hoped that the court, in the District of Columbia, allows the DTCC to intervene. It is only right that it take over some of the costs that would otherwise fall on the shoulders of the taxpayer-funded CFTC.

At issue are the rules surrounding new "swap data repositories" (SDR) envisioned under the Dodd-Frank Wall Street reform laws, which are revamping the \$650tn swaps industry. Instead of vast liabilities being traded between banks, with little oversight, the law mandates that the bulk of swaps must now be traded through central clearing houses and that there must be more transparency even around those that are not.

One key plank demands that all swaps trades, whether centrally cleared or not, must be reported to a registered SDR so that regulators can keep tabs on the system as a whole and monitor any risks building within it.

So far, only the DTCC, an industry-owned business that already provides traders with back office services for the clearing and settlement process, and a CME rival, IntercontinentalExchange (ICE), have been registered as SDRs.

The CME, which is a major clearing house for swaps, has always claimed that SDRs duplicate what it does already, namely accumulating trade data and making them available to the CFTC behind closed doors when asked. That data are a competitive advantage it has never wanted to give up.

However, CME comprehensively lost that debate and the rules on SDRs have been in place for 10 months. Belatedly, the company registered to become an SDR itself, but it is

now in a dispute with the CFTC about whether it can induce its clearing customers to use its in-house SDR over a rival's – and DTCC has been stirring the pot in letters of objection to the regulator.

With that dispute unresolved, the CME faced a November 13 deadline, after which it had to start sending data on its cleared swap trades to one of the two existing SDRs.

The timing of the lawsuit seems designed to bounce the CFTC into agreeing looser terms that might enable the CME to bundle trade reporting with clearing and other services, in ways that may not promote strong competition. Alternatively, it could delay implementation long enough that the CME can revise its plans and catch up with the DTCC and ICE.

The lawsuit demands an injunction and a judicial review. The rollout of new swaps rules – not just trade reporting, but registration of swaps dealers and mandates for electronic trading – got under way last month after long delays, but there are many rules still to be finalised and large questions over how to harmonise the new US regime with regulations in other countries.

That is more than enough work for the CFTC to be getting on with, without getting caught up in a petty competitive dispute on matters that it settled months ago.

Swaps users could do without the risk of additional postponements and confusion.