By Stephen Barlas, Michael Castelluccio, Christopher Dowsett

GOVERNMENT

"Swap Dealer" Exemption Provides Temporary Relief

By Stephen Barlas

Corporations who use certain derivatives got at least a temporary—and maybe permanent—exemption from Dodd-Frank rules requiring big users of swaps to register with the new swaps data repository launched by the Depository Trust & Clearing Corporation (DTCC). The Commodity Futures Trading Commission (CFTC) and U.S. Securities & Exchange Commission (SEC) jointly published a final rule defining "swap dealer," among other related terms, and the exemption from reporting was much more generous than expected. Large companies in the automobile, energy, and agriculture industries that use derivatives, as well as groups such as the U.S. Chamber of Commerce and National Association of Manufacturers, were worried the CFTC would stick with the $100 million exemption proposed in 2010. Companies that didn't meet the exemption, including many of the large companies in those industries, would be forced to comply with statutory requirements related to registration, margin, capital, and business conduct, among other things. The final rule says that companies who trade less than $8 billion in swaps a year will be eligible for a *de minimis* exemption from registering as swap dealers, probably for three years or so, while the agencies decide whether to lower that threshold based on reporting to the new repository. The Edison Electric Institute (EEI), another concerned trade group, called the $8 billion exemption "practical and fair."

The CFTC, which took the lead on this issue, had considered raising the initial $100 million threshold to $3 billion before settling on the higher $8 billion figure. The agencies said they would probably lower the threshold to $3 billion after three years based on what they learn about the swaps market. Part of the reason the CFTC upped the *de minimis* exemption to a temporary $8 billion in the final rule was that, according to the CFTC, "...28 entities with notional transactions in excess of $8 billion in 2011 account for more than 99% of the total notional transactions of all identified entities that year."

While many companies and industry trade groups welcomed the $8 billion threshold, it isn't clear exactly how many companies will stay below it because affiliated rulemakings are still in process. "Until the CFTC publishes a final rule on the definition of a 'swap'—expected later this summer—it is hard to know how many companies will be grappling with the complexities of the 'swap dealer' definition, or trying to measure the aggregate amount of 'swap dealing activity' to determine whether dealing swaps fit under the $8 billion temporary *de minimis* threshold, and later the $3 billion threshold," explains Russ Wasson, director of tax, finance, and accounting policy for the National Rural Electric Cooperative Association (NRECA).

Corporate Pension Funding Provision at Issue

You wouldn't think that a bill intended to keep the highway trust fund afloat could have an impact on the funding of corporate pension plans, but that's the case with the bill a House-Senate conference committee has been working on for a month. The House and Senate passed differing versions of the transportation bill (S. 1813/H.R. 4348). There are all sorts of seemingly (and actually) unrelated provisions in the bill, including one that addresses the interest rate that the federal government uses to project whether a corporate pension plan is underfunded. An underfunded plan, of course, must set aside higher reserves. Annual funding obligations for pension plans are based on a conservative measure of corporate bond interest rates, linked to interest rates set by the Federal Reserve Board. Those interest rates are historically low, which forces companies to make very high estimates of pension liabilities. According to groups such as the American Benefits Council (ABC), this has resulted in immediate, excessive, and unnecessary required pension contributions.

A provision in the Senate bill allows the Labor Department to disregard interest rates for any period to the extent that the rate for that period is not within 10% of the 25-year average interest rate. The Senate-passed version of the bill included this "25/10" structure, but only for the 2012 plan year (with a partial phase-out thereafter). "Pension policy can be exceedingly complicated, but enactment of this funding stabilization provision makes perfect sense. It smooths out a company's funding obligation so it is less sensitive to abnormally high or low interest rates that distort a plans financial condition either too positively or too negatively," ABC President James A. Klein says.

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Ownership Transitions Cost $5.6 Billion for Accounting and HR Services

A recently published survey from BizBuySell.com reports that the annual costs for accounting, payroll, and human resources exceed $5.6 billion for companies in the process of being sold. The survey also found that almost 84% of buyers and 35% of sellers of small businesses increased spending, switched vendors, or added products or services within accounting or HR as part of the transition, creating significant opportunities for the vendors of those services.

Curtis Kroeker, general manager of BizBuySell.com, explains, "These numbers show how important the substantial investments business owners make during an ownership transition are to the economy. Prior to selling, owners usually invest in their business to support a higher asking price while post-sale, owners spend to drive business performance and to get the business running the way they want."

The survey also discovered that business buyers spend more than startups in the first year of operations—buyers typically spend $95,878 during the first year of ownership while newly launched businesses spend $76,704. "There's no doubt that newly launched businesses provide an excellent opportunity for service providers," Kroeker said. "However, this survey reveals a new opportunity that has largely flown under the radar—that owners selling and, especially, those buying established small businesses are a huge target market. That's definitely something all accounting and human resource providers should keep in mind when pursuing new sales."

BizBuySell.com is a business for sale marketplace with approximately 45,000 businesses for sale and more than 825,000 monthly visits registered at its website.

BOOKS

Making a Habit of Project Success

Successful projects can make or break a company, yet they can be difficult to come by. There are different techniques and theories for managing a project, but many successful projects share underlying characteristics that contributed to their positive results. In *Improving Project Performance*, Jerry Wellman identifies eight habits of project teams that will improve the likelihood of project success. These habits can help managers and their teams stay focused on the goal they are trying to achieve and the principles that are essential to their success.

The eight habits are:

1. Develop a shared vision with all stakeholders,
2. Translate the vision into performance requirements and specifications,
3. Create and maintain an integrated plan to accomplish the requirements,
4. Monitor performance against the plan,
5. Acknowledge and accommodate uncertainty,
6. Embrace change, but control it,
7. Act to influence the future, and
8. Communicate effectively to all parties.

All of these habits are valuable, and Wellman does an excellent job at providing insight into the roles they play in success and explaining the fundamentals behind the tools and methods that will help project teams use these habits.

From my own experience as a project team member, I found the chapters on habits 5-7 to be particularly interesting.

Wellman wisely advocates for extensive planning before any work is completed. This can be difficult given a business environment that constantly pushes for tangible progress or results. Yet even after the plans are created, there are so many factors involved in a project that it's virtually impossible for everything to go as expected. This element of the unknown and unexpected can be the most intimidating challenge for a project. In habits 5-7, Wellman addresses that aspect of project management.

To combat uncertainty and changing conditions, Wellman advises developing and using a "robust discipline for indentifying, assessing, and implementing continual changes." This will help keep the project moving forward to successful completion. It's important that the project team takes action. When there's a lot of uncertainty, it's easy to fall into a passive state and wait for things to settle or resolve themselves before deciding on the proper course of action. But this leaves the project and the team vulnerable to feeling victimized, subject to the influence and control of external factors such as fickle, impatient stakeholders or poor supplier performance. The answer is to anticipate the alternatives that lay ahead of you and help shape the environment to move toward the path that will move the team and the project toward the ultimate goal.

One important solution for dealing with uncertainty, change, and inaction is to ensure that there are sufficient reserves. Wellman details four different types of reserves—financial, schedule, requirements, and resources—and explains how they can provide flexibility and greater responsiveness in adapting to changing conditions or unforeseen developments. Lack of reserves can lead to a feeling of constraint, which creates an excuse for inaction. One can easily imagine a failed team saying, "There was nothing we could do. We didn't have the resources to do anything about it."

Wellman goes into great detail for each habit, describing examples and illustrating the application of the concepts being discussed. Anyone who has had experience working on or leading a project will find the book a worthwhile read.—Christopher Dowsett