

November 13, 2009

Visit us online at www.wpma.com

WP-11-13-09

SENATOR DODD INTRODUCES FINANCIAL REFORM LEGISLATION

On Tuesday, Senate Banking Committee Chairman Christopher Dodd (D-CT) introduced a sweeping 1,136 page discussion draft financial reform bill, which will create three federal banking regulatory agencies to prevent systemic risk and to bring transparency to the unregulated \$592 trillion derivatives market. The discussion draft is largely a starting point for the Senate Banking Committee and the Senate Agriculture Committee to address financial reform priorities over the next few weeks. The discussion draft gives the Commodity Futures Trading Commission's (CFTC) jurisdiction to regulate futures, swaps and the options market, so it is likely that the Senate Agriculture Committee will seek jurisdiction over the derivatives portion of the bill.

Specifically, Sen. Dodd's discussion draft requires derivatives that can be exchange traded and centrally cleared – to be exchange traded and cleared – in order to prevent counterparty risk and to improve price discovery. It also requires traders to post margin and/or collateral on trades that are unable to centrally clear to prevent the largest swaps dealers from excessive risk taking. PMAA believes the excessive leverage that swaps dealers are able to acquire in the futures and swaps market has resulted in volatile oil prices which has wreaked havoc on the heating and motor fuels industries. At first glance, the legislation does not fully close the foreign boards of trade (FBOTs) loophole. However, the legislation imposes aggregate position limits on designated contract markets (DCMs), improves record keeping and reporting requirements on large hedge funds and exchange traded funds on all exchanges which will ensure that no one trading entity has too much market concentration in a specific commodity market. The discussion draft does attempt to close the FBOTs loophole. Under the draft, FBOTs would be in violation of federal law if they do not adopt comparable position limits (such as limits imposed on DCMs) on linked commodity futures contracts offered in the U.S.

PMAA repeatedly highlights to lawmakers that the futures market was not intended for long-only investors seeking a way to diversify their investment portfolio. Futures markets were intended for bona-fide hedgers as well as speculators who take both long and short positions. Investment-only speculators that engage in a "buy and hold strategy" serve no purpose in the commodity markets other than to diminish its role as a tool for managing risk and discovering a fair market price for physical hedgers such as petroleum marketers, heating oil dealers airlines and farmers. Without sufficient oversight and aggregate position limits, market activity can distort the price of oil and other energy commodities.

PMAA's Futures Market Reform Task Force is working with the Commodity Markets Oversight Coalition (CMOC) to review the lengthy and highly complex bill and will work to ensure that all of our concerns are included in the final bill.

SMALL BUSINESS LOSS CARRYBACK EXTENDED

On Friday, November 6, 2009, the President signed the Worker, Homeownership, and Business Assistance Act of 2009 into law. In addition to extended unemployment benefits, the new law extends the Net Operating Loss (NOL) carryback relief. The bill also extends a temporary FUTA surtax and increases a failure to file penalty for partnership and S Corporation entity level returns.

Earlier this year, the American Recovery and Reinvestment Act of 2009 extended the net operating loss carryback period from two to five years for tax years beginning in or ending in 2008 for small businesses with gross receipts of \$15 million or less.

The new law allows all businesses to carry back net operating losses for up to five years for losses incurred either in 2008 or 2009, but not both (at the election of the taxpayer). Businesses will be able to offset 50 percent of the available income from the fifth year and 100 percent of all income in the remaining four carryback years. The two positives for small business is if you were fortunate enough not to have an NOL for 2008 but the economy caught up with your business in 2009, you can use the additional years. The second positive is that our understanding of the new law is that small businesses, as defined by the provision that have already elected to carry back 2008 under the American Recovery and Reinvestment Act, may also elect to carry back losses from 2009. A FUTA surtax of 0.2 percent of wages up to \$7,000 per employee was scheduled to expire at the end of this year. It has been extended through June 2011.

RAMM COMPLETES 2010 COMMITTEE APPOINTMENTS

PMAA Chairman-elect Gerry Ramm has completed his work in filling the remaining committee appointments for the 2010 PMAA Executive Committee. The appointments completed are as follows:

Motor Fuels Division Director, Wes Loflin, NE Louisiana Wholesale Oil & Gas, Monroe, LA
Heating Fuels Director, David Foster, Wilcox Fuels, Westbrook, CT
Lubricants Division Director, Vern Kelley, Kelley Fuels, Shakopee, MN
Brands Director, Benny Hodges, Hodges Oil Company, Belen, NM
Small Business Political Action Co-Chair, Sam Bell, Echols Oil Co., Greenville, SC
Small Business Political Action Co-Chair, Gary Harris North Carolina Petroleum & CSA, Raleigh, NC
Petroleum Marketers Education Foundation (PMEF) Chairman, Craig Eerkes, Sun Pacific Energy, Kennewick, WA

In making these appointments, Gerry noted that he is looking forward to working closely with the appointees along with the newly elected and currently seated Executive Committee and PMAA Board members. "We don't have to look far to see that the issues we face are large and plentiful. It will take all of our combined leadership working together to chart the proper course and to direct our resources to meet these growing challenges. As stewards of PMAA, we must continue the focus that we've had in recent years and always look for areas to improve. I am bullish about the leadership team we have assembled and I am looking forward to the challenge," he said.

SMALL BUSINESS ASPECTS OF HOUSE HEALTH CARE BILL

All PMAA members most likely know that the U.S. House of Representatives passed its version of health care reform on Saturday evening. All eyes now turn to the U.S. Senate where a much different bill is likely to emerge.

Among the notable provisions, the House bill includes the Form 1099 "pay-go" revenue offset upon which we have reported many times. This is the provision that would require all businesses to issue Forms 1099 to all of their vendors (corporate and non-corporate entities) that provide services or provide "property" if the business pays more than \$600 annually for those services or property. The current Form 1099 law requires the issuance of Forms 1099 only to individuals who provide services. This new requirement would take effect in 2012.

The House bill includes a penalty for not providing health care benefits to employees and dependents. The requirement takes effect in 2013. The penalty structure as a percentage of payroll is as follows:

Wages do not exceed \$500,000 - 0 percent
Wages exceed \$500,000, but do not exceed \$585,000 - 2 percent
Wages exceed \$585,000, but do not exceed \$670,000 - 4 percent
Wages exceed \$670,000, but do not exceed \$750,000 - 6 percent
Wages exceed \$750,000 - 8 percent

The bill does require individuals to obtain coverage if it is not provided by an employer. The penalty for failing to do so is 2.5 percent of income with a penalty cap based on the cost of obtaining coverage. The House bill also includes a surtax on high incomes. Since it is part of the personal rate structure, it has an impact on sole proprietors, partners and S Corporation shareholders. The surtax begins at \$500,000 in income for individuals and \$1 million for joint filers. The tax is a flat 5.4 percent on those incomes. No surprise that this provision goes into effect a bit earlier - in 2011.

2010 WESTERN PETROLEUM MARKETERS CONVENTION & CONVENIENCE STORE EXPO LAS VEGAS, NEVADA

Start planning now to attend the 2010 WPMA Convention and Convenience Store Expo. It will be held at the Mirage in Las Vegas, Nevada. Mark your calendars for February 16-18, 2010.

MARK YOUR CALENDARS FOR UPCOMING EVENTS IN 2010

June 8-10, 2010 – MPMCSA Convention – Billings Hotel and Convention Center – Billings, Montana
June 22-24, 2010 – WOMA Convention – Suncadia Lodge – Cle Elum, Washington
August 4-6, 2010 – IPM&CSA Convention – Schweitzer Mountain Resort – Sandpoint, Idaho
August 31-September 1, 2010 – NMPMA Convention – TBA
September 22-24, 2010 – UPMRA Convention – Park City Marriott – Park City, Utah

Petro Pete: "Experience is something you don't get until just after you need it."

© 2009 Western Petroleum Marketers Association

All rights reserved. No part of this work may be reproduced or copied in any form or by any means - graphic, electronic, or mechanical, including photocopying, recording, or otherwise. The information herein is also intended for the sole purpose of members of the Western Petroleum Marketers Association (WPMA). Any other use is strictly prohibited without the express written consent of the WPMA.

If you do not wish to receive information via fax or e-mail, please contact WPMA at: (801) 263-9762, Fax: (801) 262-9413, or e-mail: janr@wpma.com. Thanks.