



TRAFIGURA AG

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Secretary of the Commission
Commodity Futures Trading Commission
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COMMENT

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O.F.T.O.
OFFICE OF THE SECRETARIAT

15 September 2010

Dear Sir

**Comments on Definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act
Federal Register August 20, 2010 page number 51429**

I submit these comments on behalf of Trafigura AG, which is a major independent company that trades commodities in the United States and also on behalf of the Trafigura Group, which trades commodities globally.

Trafigura is concerned about the lack of clarity for commodities trading companies between the following definitions; Swap Dealer, Major Swap Participant and End User.

The definition of Swap Dealer is mainly focused on persons who hold themselves out to the market as a dealer or market maker in swaps. However the following part of the definition appears to create great uncertainty for traders and end users:

- (49)(A)(iii) – “Regularly enters into swaps with counterparties as an ordinary course of business for its own account;”

This part of the definition is not subject to acting as a dealer or market maker. It appears to cover a trader entering into hedging and other swaps purely for the purposes of its own business.

It is of course prudent practice for a commodity trading company to enter into swaps in order to provide a financial hedge for its potentially substantial exposures to movements in commodity prices during the time that it has ownership of the commodities. It would have significant commercial implications if the trading company found that this activity fell within the definition of Swap Dealer and required it to be registered or regulated by the CFTC solely for that reason. As the legislators have recognised, it would be counter-productive if too broad an interpretation of Swap Dealer resulted in a reduction of proper hedging activity or the movement of such activity to other jurisdictions. This same issue arises for swap activity carried out by one member of a trading group for its affiliate companies; a corporate structure that is common throughout the trading business.

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It is helpful to compare the above definition with that of End User; that is, a person that enters into swaps for bona fide hedging of commercial risk. This definition would appear to cover the hedging activity referred to above, however the legislation prevents an end user from being classified as an End User if its activities come within the definition of Swap Dealer.

The definition of Major Swap Participant creates further difficulties of interpretation, although on first reading it seems to be less applicable to trading entities than the definition of Swap Dealer, due to the exclusion for "positions held for hedging or mitigating commercial risk".

In summary, Trafigura is concerned that a rigid interpretation of Swap Dealer and Major Swap Participant may result in the imposition of a heavy regulatory burden, with a negative impact on prudent commercial swap activity.

Yours faithfully,

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Pierre Lorinet
Trafigura Group CFO and Managing Director