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Commodity Futures Trading Commission
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- **17 CFR Part 39**
- **RIN Number 3038–AD10**
- **End-User Exception to Mandatory Clearing of Swaps**

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your proposed rule “End-User Exception to Mandatory Clearing of Swaps”.

You are proposing new requirements governing the exception to mandatory clearing of swaps available for counterparties meeting certain conditions under Section 2(h)(7) of the Commodity Exchange Act (CEA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act. These relate to the “end-user exception” from mandatory clearing and centralised trading requirements of swaps that applies where one party to a swap is not a financial entity, is using swaps to hedge or mitigate commercial risk, and notifies the CFTC of how it generally meets its financial obligations associated with entering into non-cleared swaps.

The term “financial entity” in this context is defined as:

- swap dealers
- major swap participants
- commodity pools
- private funds as defined in the Investment Advisers Act of 1940,
- employee benefit plans as defined in the Employee Retirement Income Security Act of 1974
- persons predominantly engaged in banking or financial activities, as defined in the Bank Holding Company Act of 1956.

The proposed rule considers that a swap is used to hedge or mitigate commercial risk if:

- the swap is economically appropriate for reducing certain business risks, that are present or reasonably expected to arise in the future, including the potential change in value of assets, liabilities, or services, or fluctuations in foreign exchange rates or interest rates
- the swap qualifies as bona fide hedging for purposes of an exemption from position limits under the CEA
- the swap qualifies for hedging treatment for accounting purposes
- the swap is not held for a purpose that is in the nature of speculation, investing or trading
- the swap is not held to hedge or mitigate the risk of another swap position, unless that other position itself is held for the purpose of hedging or mitigating commercial risk.

The decision as to whether a position is used to hedge or mitigate commercial risk should ideally be made at the time the swap is entered into, considering the circumstance existing at that time, and taking into account management's general hedging and risk mitigation strategies.

I support the proposals, and specifically the notification requirements therein, which will help to prevent abuse of the end-user clearing exception. I also agree with the methods allowed for meeting financial obligations, including reliance on own resources and the possibility to use "other means" where appropriate.

Yours sincerely

Chris Barnard