



February 15, 2011

Mr. David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington D.C. 20581
Email: secretary@cftc.gov

COMMENT

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OFFICE OF THE
SECRETARIAT

RE: Derivatives Definitions of Dodd-Frank Act

Dear Mr. Stawick:

I am writing to you to provide comments on two of the Definitions in the Derivatives section of Dodd-Frank. They are the Eligible Contract Participant (“ECP”) and Swap Dealer definitions.

I am Chief Development Officer at Capstar bank, a de-novo bank set up in Nashville, Tennessee in 2007. Since our launch we have grown to over \$500 million in assets.

Several of our executives, myself included in my previous position at First Tennessee Bank, have had experience in using the swap product and know its importance in helping to provide long-term fixed rates to commercial borrowers. At Capstar, we have used the product since the formation of the bank.

To date we have entered into 11 transactions, with a total Notional of approximately \$26,000,000. Almost all of the parties we transacted with qualified for the swap under the 1989 Policy Statement business purpose exemption. They are all LLC’s and consequently do not a significant level of net worth at the entity level.

We are requesting that you consider expanding the ECP definition to include those parties who currently have access under the 1989 Policy Statement (typically real estate developers, LLC’s, “S” Corps, and LLP’s). This segment of the market has been operating efficiently, without major controversy, for over 20-years.

If the definition is not expanded to include these entities, there are two major consequences; 1) Long-term fixed rates will be less available to many medium and small business borrowers of regional and community banks, and 2) Regional and community banks will be less competitive

to larger banks who are better able to take long-term interest rate risk onto their balance sheets and manage it on a global basis.

Under the Swap Dealer definition a bank is exempted from registering as a Swap Dealer if its swap activity is limited to swaps in conjunction with its loan origination efforts. You have asked for comments on whether this exemption should be limited to swaps executed at loan closing, or contemporaneous with loan closing.

We believe this is an unnecessary restriction and would put non-dealers at a huge competitive disadvantage. A swap fixed rate could only be offered at loan closing, therefore taking away all flexibility from the borrower as to when they want to lock. This would result in smaller banks losing more loans to larger Dealer banks. In addition, if existing borrowers request a swap fixed rate, we could not accommodate them. The proposed limitation provides Dealers with a huge competitive advantage in the market over smaller non-Dealer banks.

If regulators want to put restrictions on usage this can be done by guidelines such as: Swap Amount cannot be larger than Loan Amount, Swap Term cannot be longer than Loan Term, Swap and Loan payment dates must match. We already have such internal controls as part of our policy, and I would suspect that the majority of regional and community banks using it have similar policies and procedures.

I would like to thank you for the consideration given to the above comments. Should you wish to contact me regarding the response, I would be glad to make myself available.

Sincerely,



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