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Summary of Comments to the Commodity Futures Trading Commission Regarding the Dodd-Frank Wall Street Reform and Consumer Protection Act

February 16, 2011

Kraft Foods Representatives

Treasury	Mark Magnesen, Sr. Vice President & Treasurer Johan Nystedt, Assistant Treasurer
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Kraft Foods Profile

Kraft Foods Inc. is one of the World's Largest Consumer Goods Companies

- Annual Revenues of $49 Billion
- Total Assets of $95 Billion and Net Assets of $36 Billion
- Global Reach with over 300 Affiliated Companies Worldwide
- Food Manufacturer and Marketer in 170 Countries
- Operations in over 75 Countries
- Portfolio of Iconic Brands, Including 11 Brands with Revenues over $1 Billion
- Member of the Dow Jones Industrial Average, S&P 500 and Dow Jones Sustainability Index
- Incorporated in Virginia and Headquartered in Illinois

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Kraft Foods Affiliates Relevant to Dodd-Frank Act

Kraft Foods has two wholly-owned indirect subsidiaries that act as "Centralized Hedging Centers" that are relevant to CFTC's proposed rules further defining the swap entities and end-user clearing exception

Centralized Hedging Centers

	Kraft Foods Finance Europe (KFFE)	Taloca GmbH
What They Do	▪ Acts as our in-house treasury ▪ Centralizes global cash management ▪ Provides foreign exchange services to all affiliates ▪ All currency hedging supported by company exposure (i.e., no speculation)	▪ Centralized procurement unit for globally managed commodities ▪ Centralized commodity hedging operation for Kraft Foods affiliates outside of North America ▪ All commodity hedging supported by physical needs (i.e., no speculation)
Company Benefits	▪ Increased efficiency ▪ Stronger / centralized internal controls ▪ Lower costs ▪ Lower exposure to counterparties (i.e., banks) due to netting of intercompany exposures	▪ Increased efficiency ▪ Stronger / centralized internal controls ▪ Lower costs

Commercial Risk Hedging and Mitigation

KFFE and Taloca act on behalf of Kraft Foods affiliates in that they:

- Structure transactions to hedge or mitigate commercial risks
- Act on instructions from affiliates and the parent company
- Maintain a neutral position for themselves (excluding short-term timing differentials)

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Business ⇄ **KFFE** → **External Swap Dealers**

Business
- Provide coverage needs based on exposure
- Provide currency hedging instructions

KFFE
- Provides currency outlooks
- Executes FX transactions using derivatives (i.e., forwards, options)
  - Enters into swaps with Business
  - Enters into offsetting swaps with traditional swap dealers

External Swap Dealers
- Act as counterparty to Kraft Foods transactions
- Make currency markets

Business ⇄ **Taloca** → **External Swap Dealers**

Business
- Provide coverage needs based on exposure
- Provide commodity hedging instructions

Taloca
- Provides commodity outlooks
- Executes commodity transactions using derivatives (eg., futures, forwards, options)
  - Enters into swaps with Business
  - Enters into offsetting swaps with traditional swap dealers

External Swap Dealers
- Act as counterparty to Kraft Foods transactions
- Make commodity markets

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Kraft Foods' Concerns with the CFTC's Implementation of Dodd-Frank Act

Given the activities performed by our Centralized Hedging Centers ("CHCs") and the language in the current draft proposal, we have concerns in three key areas

Key Areas of Concern

- End-User Clearing Exceptions may not apply to our CHCs
- Major Swap Participant Definition may apply to our CHCs
- Swap Dealer Definition may apply to our CHCs

We do not believe it was the CFTC's intention, or in the spirit of the Dodd-Frank Act, to restrict CHCs' activities…we are therefore requesting that the proposed rules be clarified

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Summary of Comments

We believe that non-financial companies' CHCs should not be considered "financial entities" and should qualify for the end-user clearing exception

End-User Clearing Exception

Cause for Concern	▪ CHCs may be defined as "financial entities" because the derivatives they enter into on behalf of the business are "financial in nature"; and ▪ CHCs may not be deemed end-users, even though they simply act on behalf of affiliates to hedge or mitigate commercial risks

Implications	▪ Mandatory exchange clearing would significantly complicate and limit many derivatives we use in the normal course of business for risk mitigation
	    ▪ Foreign exchange transactions with banks
	    ▪ Commodity transactions
	▪ Basis risk would increase due to inability to tailor risk derivatives
	▪ Higher costs, i.e., due to margin requirements and clearinghouse fees

Proposed Clarifications	▪ CHCs of non-financial companies are excluded from the definition of a "financial entity," and are deemed end-users that qualify for the End-User Clearing Exception ▪ Swap transactions entered into as an intermediary or on behalf of affiliates qualify for the End-User Clearing Exception

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Summary of Comments

We believe CHCs should be excluded from the Major Swap Participant definition

Major Swap Participant Definition

Cause for Concern	▪ First Test: Internal swaps entered into by CHCs to hedge the commercial risk of the entire group could be inappropriately excluded from the definition of "hedging or mitigating commercial risk" because the CHCs are not acting on their own behalf ▪ Third Test: CHCs may be classified as "financial entities" and could be "highly leveraged" due to intercompany loans
Implications	▪ Margin and capital requirements ▪ Higher costs ▪ Additional reporting and compliance
Proposed Clarifications	▪ Transactions by CHCs on behalf of affiliates should qualify as "hedging or mitigating commercial risks," and therefore are excluded from the threshold calculation for a Major Swap Participant under the First Test ▪ CHCs of non-financial companies are excluded from the definition of a "financial entity," thereby avoiding the implications of the Third Test

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Summary of Comments

We believe CHCs should be excluded from the Swap Dealer definition

Swap Dealer Definition

Cause for Concern	▪ CHCs may meet the Swap Dealer definition because their activities on behalf of their affiliates can be misinterpreted as "accommodating demand for swaps from other parties" ▪ CHCs may inadvertently meet a separate Swap Dealer definition by trading for their own accounts, even though they do so only on behalf of affiliates to hedge or mitigate their commercial risks
Implications	▪ Margin and capital requirements ▪ Higher costs ▪ Additional reporting and compliance
Proposed Clarifications	▪ Adopt the "economic reality" test suggested by the Commission ▪ As applied to CHCs, the economic reality test shows that their transactions simply represent an "allocation of risk" within a corporate group to hedge or mitigate commercial risk ▪ Therefore CHCs should not be inappropriately classified as "swap dealers"

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Summary

- The use of Centralized Hedging Centers such as Kraft Foods' KFFE and Taloca affiliates is a common practice among U.S. non-financial companies
- Centralized Hedging Centers provide many benefits to companies like Kraft Foods and consumers, as well as to their counterparties and the financial system
  - Reduced costs and risk
  - Increased global competitiveness
  - Job creation and protection
  - Lower and less volatile prices for products
- We believe that the Dodd-Frank Act does not intend to interfere with internal risk management structures like Centralized Hedging Centers
- We respectfully request that the CFTC clarify that non-financial companies such as Kraft Foods and its affiliates are not "Swap Dealers", "Major Swap Participants" or "Financial Entities" and qualify for "End-User Exceptions"

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