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- **17 CFR Parts 39 and 140**
- **RIN Number 3038-AD00**
- **Process for Review of Swaps for Mandatory Clearing**

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your notice of proposed rulemaking:
Process for Review of Swaps for Mandatory Clearing.

You are proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). These proposed rules apply to the review of swaps by the CFTC to determine whether the swaps are required to be cleared, and are of fundamental importance in ensuring the legitimacy of, and integrity in, the swap market.

Section 723(a)(3) of Dodd-Frank amends the CEA to provide that "it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization (DCO) that is registered under (the CEA) or a (DCO) that is exempt from registration under (the CEA) if the swap is required to be cleared." In addition, Section 745(b) of Dodd-Frank amends the CEA to direct the CFTC to prescribe criteria, conditions, or rules under which the CFTC will determine the initial eligibility or the continuing qualification of a DCO to clear swaps. The statutory language here is very clear, and requires a balancing of interests between DCOs, particularly with respect to their risk management, and the wider intent to maximise swap clearing. I would recommend some changes in order to optimise these competing interests:

- 1) risk management is at the heart of DCOs' operations. I am not convinced that § 39.5(b)(3)(i) is sufficient or complete in this regard. This requires, under swap submissions, a "statement that... the derivatives clearing organization will be able to maintain compliance with section 5b(c)(2) of the Act". I would not accept such a simple statement of fact without sufficient evidence or CFTC review indicating that the DCO would be able to maintain compliance with the requirements of section 5b(c)(2) of the Act (CEA). Such evidence or review should therefore be required for all swaps.
- 2) Additionally, in order to promote fairness, I would specifically recommend that you change the wording under § 39.5(b)(3)(xi) and require the DCO to provide a summary of "any comments on the submission expressed by the members" rather than just "any opposition to the submission expressed by the members".
- 3) Finally, in terms of transparency under swap submissions, I would support the proposed publicity requirements under § 39.5(b)(4). I would recommend the fullest disclosure that is possible here.

Swap markets are continually innovating and changing. In order to appropriately maximise swap clearing, I would recommend that the CFTC resource itself such that it would genuinely be able to review (not-cleared) swaps on an "ongoing basis" in order to make a determination as to whether the swaps should be required to be cleared.

Yours sincerely

Chris Barnard