

David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
United States
www.cftc.gov

Chris Barnard
Germany

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- **17 CFR Part 1**
- **RIN Number 3038-AD23**
- **Agricultural Commodity Definition**

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your notice of proposed rulemaking: Agricultural Commodity Definition.

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). Dodd-Frank, which amends the Commodity Exchange Act (CEA), includes provisions applicable to “a swap in an agricultural commodity (as defined by the CFTC).” Neither Congress nor the CFTC has previously promulgated a definition of that term for purposes of the CEA or CFTC regulations. This notice reviews the statutory and regulatory history of the term “agricultural commodity”, and proposes a definition of that term for purposes of the CEA and CFTC regulations.

Your proposed agricultural commodity definition is broken down into four categories:

1. the enumerated commodities listed in section 1a of the CEA, including such things as wheat, cotton, corn, livestock etc;
2. a general operational definition that covers: “All other commodities that are, or once were, or are derived from, living organisms, including plant, animal and aquatic life, which are generally fungible, within their respective classes, and are used primarily for human food, shelter, animal feed, or natural fiber”;

3. a catch-all category for commodities that would generally be recognized as agricultural in nature, but which don't fit within the general operational definition, e.g. tobacco; and
4. a provision applicable to: "Commodity-based contracts based wholly or principally on a single underlying agricultural commodity".

I support the approach that you have taken here with the proposed definition of agricultural commodity. However, I have serious concerns with 4. above. In Part II - Explanation of the definition, you state that:

The commodity-based contracts category would also include an index based wholly or principally on a single underlying agricultural commodity... Thus, for example, under the commodity-based contract provision, a swap contract based on a price index of equal parts wheat, corn and soybeans, or even a swap based on a price index of 50% corn and 50% wheat, would not be based wholly or principally on a single underlying agricultural commodity and so would not fall within the agricultural commodity definition.

I am not convinced by the argument that such swaps would appear to fall within the excluded commodity definition (under current CEA § 1a(13)(iii)), and this definition is also contrary to common sense, the spirit and intent under Dodd-Frank, and to economic rationale. For example, I could replicate your posited 50% corn and 50% wheat index with 50% nominal in a corn index and 50% nominal in a wheat index. Both portfolios would be substantially identical, and yet would be classed differently under your proposed definition.

I would therefore strongly recommend that you should propose under 4. above (proposed § 1.3(z)(4)) a definition which would apply to: "Commodity-based contracts based wholly or principally on underlying agricultural commodities".

Yours sincerely

Chris Barnard