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- **17 CFR Part 23**
- **RIN Number 3038-AC96**
- **Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants**

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your notice of proposed rulemaking: Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants.

You are proposing regulations to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). The proposed regulations set forth certain duties imposed upon swap dealers (SDs) and major swap participants (MSPs) registered with the CFTC with regard to: risk management procedures; monitoring of trading to prevent violations of applicable position limits; diligent supervision; business continuity and disaster recovery; disclosure and the ability of regulators to obtain general information; and antitrust considerations. The proposed regulations would implement the new statutory framework of section 4s(j) of the Commodity Exchange Act (CEA), added by section 731 of Dodd-Frank, excepting regulations related to conflicts of interest pursuant to section 4s(j)(5), which will be addressed in a separate rulemaking. These regulations set forth certain duties with which SDs and MSPs must comply to maintain registration as an SD or MSP.

I have commented previously on risk management requirements for derivatives clearing organizations,¹ and the following comments on risk management for SDs and MSPs (swap entities) are substantially similar.

¹ See my comment letter on: Risk Management Requirements for Derivatives Clearing Organizations, RIN 3038-AC98, CFTC, January 2011.

Risk management

The proposals address risk management requirements, including a requirement that a swap entity must have a comprehensive written risk management program, subject to internal audit. Risk management effectively encompasses organisational structure,² governance, the risk functions, internal controls, compliance, internal audit and the legal functions. Each of these expertise should be included in the risk management unit. Furthermore I would recommend that you focus more on operational risk, which is glossed over in the proposals. Operational risk³ is critical as operational risk failures effectively allow other types of risk, such as credit risk and market risk to be excessive. I would also specifically recommend that you add wording to § 23.600(c)(4)(vi) Operational risk, in order to cover the increased risks inherent in using programs or models from external providers / vendors (i.e. avoid using “black boxes” without controls and review).

I would also suggest that you consider the role of disclosure in more detail. Reporting, including public disclosures, should allow regulators and market participants to assess a swap entity’s approach to risk management. This should further increase confidence in swap markets.

Yours sincerely

Chris Barnard

² For example, reporting lines and the allocation of responsibilities and authority within a swap entity should be clear, complete, well defined and enforced.

³ The definition of operational risk in your footnote 12 could include legal risk, but would exclude strategic and reputational risk.