

David A. Stawick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581  
United States  
[www.cftc.gov](http://www.cftc.gov)

Chris Barnard  
Germany

24 May 2011

- **17 CFR Parts 1, 37, 38, 39 and 40**
- **RIN Number 3038-AD01**
- **Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest**

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your notice of proposed rulemaking: Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest.

You are proposing regulations to further implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). Specifically, the CFTC proposes certain substantive requirements on the resolution of conflicts of interest, in order to further implement core principles applicable to derivatives clearing organizations ("DCOs"), designated contract markets ("DCMs"), and swap execution facilities ("SEFs"). Such substantive requirements address reporting, transparency in decision-making, and limitations on use or disclosure of non-public information, among other things. For DCOs and DCMs, the Commission also proposes regulations to implement core principles concerning governance fitness standards and the composition of governing bodies. Finally, for publicly-traded DCMs, the Commission proposes regulations to implement the core principle on diversity of Boards of Directors.

I support the proposed regulations that will apply to all DCOs, DCMs and SEFs (registered entities). They strike the right balance between a principle-based and a rules-based

approach. I agree that some bright-line regulations are necessary to facilitate compliance, promote consistency, ensure a more transparent market and ultimately to protect the integrity of markets. I hope that the following comments will be helpful to you.

#### Protections for significant committees

The proposed rules establish reporting mechanisms that will act to protect the authority and independence of significant committees. For example § 37.19(d) requires an SEF to report to the CFTC each time that its Board of Directors rejects a recommendation or supersedes an action of the Regulatory Oversight Committee or the Membership or Participation Committee. § 38.851(d) establishes similar reporting requirements for DCMs. Additionally § 39.25 requires a DCO to report to the CFTC each time that its Board of Directors rejects a recommendation or supersedes an action of the Risk Management Committee or its subcommittee. I agree that these proposals will alert the CFTC to potential conflicts of interest and act to deter conflicts of interest from arising in the first place.

#### Customer representation

You have raised the possibility of requiring customer representation on the Board of Directors (Board) of a DCO and / or on the risk management committee (RMC) of the DCO. In the commentary you anticipate adopting only one requirement on customer representation here. I think that this is a mistake. The RMC is a specialised expert committee and the Board would be expected to greatly rely on its advice and recommendations. The Board is ultimately responsible for decision-making within the DCO. Given this I would recommend that you propose customer representation on both the Board and the ROC in order to facilitate optimal decision-making and instigate (by construct) peer review of any risk management advice and recommendations at the ultimate decision-making level.

#### Performance review

§ 37.19(b)(5)(v) requires the Regulatory Oversight Committee (ROC) of an SEF to prepare an annual report for the Board and the CFTC that shall: "Review the performance of disciplinary committees and panels, as well as the performance of the Chief Compliance Officer". § 38.851(b)(5)(v) requires the ROC of a DCM to prepare a similar annual report. Please would you clarify what you mean by "review the performance" in these contexts, and on what measures performance would be expected to apply when relating to SEFs and DCMs?

Yours sincerely

Chris Barnard