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Commodity Futures Trading Commission
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- **17 CFR Parts 1, 23 and 140**
- **RIN Number 3038-AD54**
- **Capital Requirements 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: Capital Requirements of Swap Dealers and Major Swap Participants.

You are proposing rules that would implement the new statutory framework in the Commodity Exchange Act (CEA), added by the Wall Street Reform and Consumer Protection Act (Dodd-Frank). These new provisions of the CEA require, among other things, the CFTC to adopt capital requirements for certain swap dealers (SDs) and major swap participants (MSPs). The proposed rules also provide for related financial condition reporting and recordkeeping by SDs and MSPs. The CFTC further proposes to amend existing capital and financial reporting rules for futures commission merchants (FCMs) that also register as SDs or MSPs. The proposed rules also include requirements for supplemental FCM financial reporting to reflect section 724 of Dodd-Frank.

I support all of the proposed capital requirements for SDs and MSPs (swap entities). These should ensure the financial solvency of swap entities, and therefore act to protect market participants by ensuring that swap entities are sufficiently capitalised at all times. I also agree with the proposed financial condition reporting requirements, especially the requirement to file monthly financial reports with the CFTC, and to give prompt notice when own capital at any time is less than that required by the rules.

The proposed rules rely, where relevant, on the Prudential Regulators' existing regulatory capital requirements for swap entities. However, I would generally comment that the proposed rules should ideally be as close as possible to such rules proposed by the

Securities and Exchange Commission for security-based swap dealers and major security-based swap participants.¹ I would suggest that there is little administrative or economic rationale for proposing very different rules, and rule differences lead to duplication of reporting regimes at the lowest level of the reporting entities, which is counterproductive, confusing and wasteful. I would therefore strongly recommend that the CFTC and the SEC should work more closely together to propose one set of robust rules regarding such swap entities. This will reduce cost and complexity, and is in itself a strong signal to the markets that regulators are seen to be working more closely together, rather than within their individual silos.

Internal models

I support proposed § 23.103, which raises the possibility to allow swap entities to use approved internal models to calculate their market risk exposure and OTC derivatives credit risk requirements. This would allow a more effective capital targeting compared with the factor approach proposed under § 23.104. The use of (approved) internal models is very much the way to go,² and would surely spur swap entities to develop and use the more risk-accurate internal models compared to the rather more simplistic factor approach. I hope that the CFTC will receive the necessary increased resources and staffing in order to allow it to periodically review all such proprietary internal models in the future.

Recordkeeping requirements

Proposed § 23.106 establishes the recordkeeping requirements for swap entities in the context of their capital requirements. I would recommend that all such swap data records should be required to be kept indefinitely rather than for the general five years³ proposed under § 23.106(b). Relevant original documents should be scanned. There is certainly no technological or practical reason for limiting the retention period, and it would be useful to keep this information for future analytical purposes. I would also recommend that records required under § 23.104(e)(1)(iii) in the context of credit risk should be required to be kept indefinitely.

Yours sincerely

Chris Barnard

¹ As required by Dodd-Frank, which added a new section 4s to the CEA. § 4s(e)(3)(D)(ii) states that the Prudential Regulators, the CFTC and the SEC "shall to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of non cash collateral, for - (I) swap dealers; and (II) major swap participants."

² Similar to the approach adopted by Basel for banks, and e.g. Solvency II for European insurers.

³ Pursuant to § 1.31 of the Commission's regulations.