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June 3, 2011

Mr. David A. Stanwick, Secretary,
Commodity Futures Trading Commission,
Three Lafayette Centre,
1155 21st Street, N.W.,
Washington, DC 20581

Ms. Elizabeth M. Murphy, Secretary,
Securities and Exchange Commission,
100 F Street, N.W.,
Washington, DC 20549

Re: Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major-Swap Participant" and "Eligible Participant," RIN 3235-AK65.

Dear Mr. Stanwick and Ms. Murphy:

Wells Fargo & Company ("Wells Fargo")[1] is pleased to submit this comment to the Commodity Futures Trading Commission (the "CFTC") and the Securities and Exchange Commission ("SEC") (jointly with the CFTC, the "Commissions"), in response to the joint proposed rule issued by the Commissions to further define the terms "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-

[1] Wells Fargo & Company ("Wells Fargo"), is a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across North America and internationally. Wells Fargo has $1.2 trillion in assets and more than 278,000 team members across 80+ businesses.

Based Swap Participant," and "Eligible Contract Participant" (the "Proposed Rules"),[2] as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). Wells Fargo, along with seven other financial institutions, submitted a previous comment on the Proposed Rules, dated May 11, 2011, which addressed certain aspects of the definition of the term "Eligible Contract Participant" ("ECP").

In addition to the issues raised in that letter, we respectfully urge the Commissions to address an error related to the definition of the term ECP in Section 1(a)(18) of the Commodity Exchange Act, as revised by Dodd-Frank (the "CEA"), pursuant to their definitional rulemaking authority under Dodd-Frank. For the reasons set forth below, we believe that the action we recommend is fully consistent with the purposes and intent of the CEA and Dodd-Frank, and will prevent adverse consequences to market participants, (particularly smaller local governments, tribal entities and municipalities) that might unintentionally be excluded from the definition of an ECP absent clarification.

Under new Section 1(a)(18)(A)(vii)(III)(bb) of the CEA, a governmental entity, or any instrumentality, agency, or department of a governmental entity or political subdivision of a governmental entity must own or invest on a discretionary basis $50,000,000 or more in investments in order to qualify as an ECP. Prior to Dodd-Frank, this threshold test required $25,000,000 or more in investments for an entity to qualify as an ECP. However, Section 1(a)(18)(A)(vii)(III)(cc) provides an alternative to the discretionary investments test: this Section offers a safe harbor for "an agreement, contract, or transaction is offered by, and entered into with, an *entity* that is listed in any of subclauses (I) through (VI) of section 2(c)(2)(B)(ii)." We believe that the reference to section 2(c)(2)(B)(ii) is erroneous, as that section does not list the applicable entities, but instead describes the dollar amounts that apply for purposes of Section 2(c)(2)(B).[3] We believe that the correct reference is clearly to section 2(c)(2)(B)(i), as that clause describes the various entities eligible to serve as counterparties to transactions under Section 2(c), such as a United States financial institution or a financial holding company; a registered broker-dealer or an associated person of a registered broker-dealer; a futures commission merchant or an affiliated person of a futures commission merchant; or a retail foreign exchange dealer. Therefore, section 2(c)(2)(B)(i), not section 2(c)(2)(B)(ii), is clearly the proper cross-reference to be included in Section 1(a)(18)(A)(vii)(III)(cc).

We note that when this section was initially added to the CEA, the cross-reference to section 2(c)(2)(B)(ii) was correct and operative. However, in 2008 Congress approved an unrelated amendment to the CEA, which inserted additional provisions and thus

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[2] Notice of Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant." 75 Fed. Reg. 80178 (December 21, 2010).

[3] Section 2(c)(2)(B)(ii) states "The dollar amount that applies for purposes of this clause is— (I) $10,000,000, beginning 120 days after the date of the enactment of this clause; (II) $15,000,000, beginning 240 days after such date of enactment; and (III) $20,000,000, beginning 360 days after such date of enactment."

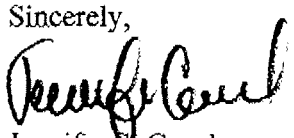
changed the numbering of the text located at section 2(c)(2)(b)(ii), but failed to make a conforming amendment to the ECP definition. As a result of that unrelated amendment, the list of entities that were listed in subclauses (I) through (VI) of section 2(c)(2)(B)(ii) was moved to section 2(c)(2)(B)(i)(II)(aa)-(ff), and the cross-reference became erroneous. This incorrect cross-reference is not a result of Dodd-Frank, but rather, has existed since 2008. However, there was less of a need to correct the error before the enactment of Dodd-Frank which, as noted, raised the threshold for governmental entities. As a result, many entities that qualify under the current definition will not qualify after the effective date. Accordingly, these entities and their counterparties will be required to rely on clause (cc), the provision with the erroneous cross-reference. The combination of these factors, therefore, and the effectiveness of the changes to the definition in July, creates a compelling need for a resolution of the problem.

Absent clarification or correction by the Commissions, municipalities, other local governmental entities and other types of entities encompassed within this part of the ECP definition will be excluded from the definition of an ECP if they do not have $50,000,000 or more in investments, because the alternative basis for qualification as an ECP, which was clearly intended by Congress to be available, will not cover such entities. As a result, many municipalities and a wide range of other entities will be prohibited from engaging in hedging transactions that are essential to their financing and risk management operations, because Dodd-Frank prohibits non-ECPs from entering into any transactions that are not executed on a designated contract market. Accordingly, these entities will not be able to enter into bilateral hedging transactions or swaps that are executed on swap execution facilities or, to the extent otherwise permissible, in the over-the-counter market. This result will subject local governmental entities and others to much greater risk with respect to interest rates and other exposures and could force them to curtail many essential governmental activities. In order to avoid this outcome, we respectfully request that the Commissions correct this clearly erroneous reference in the definition of ECP through interpretive guidance, rulemaking or Commission order, to ensure that local governments and other entities intended to be treated as ECPs can continue to enter into hedging transactions.

We further note that under new Section 1a(18)(C) of the CEA, as amended by Dodd-Frank, the statutory definition of ECP includes "any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person." Therefore, the CFTC has the authority to correct this problem without requiring a statutory change to the CEA. To do so, the CFTC could create a new category of market participants that would be defined as entities that enter into "an agreement, contract, or transaction is offered by, and entered into with, an entity that is listed in any of subclauses (I) through (VI) of section 2(c)(2)(B)(i)." This would allow municipalities and other governmental entities to retain their status as ECPs, and would allow these entities that are currently engaged in hedging transactions to maintain their financial hedges. We also note that this clarification by rulemaking would be entirely consistent with Congressional intent in adopting the provision for governmental entities within the ECP definition.

We appreciate the opportunity to share our concerns with the Commissions on this important issue relating to the definition of ECPs and welcome the opportunity to discuss any questions the Commissions may have with respect to our comments. Any questions about this letter may be directed to Jennifer Canel at (847) 780-4880.

Sincerely,



Jennifer S. Canel
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