

SCOTT DESJARLAIS, M.D.
4TH DISTRICT, TENNESSEE

COMMITTEE ON AGRICULTURE
SUBCOMMITTEE ON
LIVESTOCK, DAIRY AND POULTRY

COMMITTEE ON
EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON
HEALTH, EMPLOYMENT, LABOR, AND PENSIONS

COMMITTEE ON
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SUBCOMMITTEE ON HEALTH CARE, DISTRICT OF
COLUMBIA, CENSUS, AND THE NATIONAL ARCHIVES
SUBCOMMITTEE ON REGULATORY AFFAIRS,
STIMULUS OVERSIGHT, AND GOVERNMENT SPENDING



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June 14th, 2011

Dear Chairman Gensler:

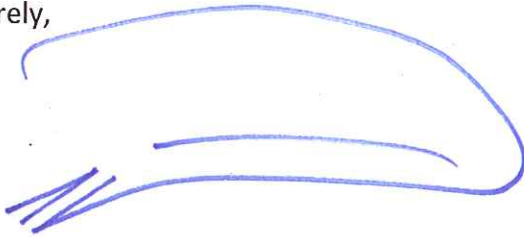
We are writing to seek clarity on your view of the scope of the swap dealer definition, particularly as it applies to the energy and agricultural communities. We have heard concerns from many businesses that under the Commission's proposal, an entity that has no customers, is not a market maker, does not hold itself out as a swap dealer and is not generally known as a swap dealer, could still be deemed to be a swap dealer. Is this the Commission's interpretation of the scope of swap dealer?

In the release accompanying the Commission's proposed definition of swap dealer, the Commission states that indicia of dealing activity include "accommodating demand for swaps... from other *parties*" [emphasis added] and being "available to enter into swaps...to facilitate other parties' interest in entering into those instruments." Do you intend by using the word "parties" as opposed to "customers" to suggest that one can be a swap dealer as a result of arm's length transactions with counterparties in the market, or is the existence of a customer relationship an essential element of swap dealing. In addition, under this language and structure, we have heard concerns that a high frequency trader could be deemed to be a swap dealer. Is this the Commission's intent? Could other active traders also be deemed to be swap dealers under this analysis? How would the determination be made as to the level of trading activity necessary to constitute swap dealing?

We also have heard concerns that the release accompanying the CFTC's proposal does not describe what constitutes "making a market in swaps" and that the Commission may view simple trading activities as market making, including the active trading referred to above. Please clarify what activities constitute "making a market in swaps?"

Finally, during the March 31st House Agriculture Committee hearing, several witnesses representing agricultural and energy commercial companies were asked if they knew where they were classified under the rules. We are concerned by the fact that not one of the witnesses was certain as to where they would be classified, i.e., end user or swap dealer. How will the Commission address this uncertainty so that individual commercial firms can know for sure whether they are end users or swap dealers?

Sincerely,

A handwritten signature in blue ink, consisting of a large, sweeping loop at the top and several horizontal strokes at the bottom.

Scott DesJarlais, M.D.
Member of Congress

cc: The Honorable Frank Lucas, Chairman of the House Committee on Agriculture
The Honorable K. Michael Conaway, Chairman of the House Agriculture Subcommittee
on General Farm, Commodities and Risk Management