Please note that the comments expressed herein are solely my personal views

David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
United States
www.cftc.gov

Chris Barnard
Germany

22 December 2011

- 17 CFR Parts 37 and 38
- RIN Number 3038-AD18
- Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available To Trade

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your Further notice of proposed rulemaking on: Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available To Trade.

You are proposing regulations that establish a process for a designated contract market (DCM) or swap execution facility (SEF) to make a swap "available to trade" as set forth in new Section 2(h)(8) of the Commodity Exchange Act (CEA) pursuant to Section 723 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

I would like to make one comment about the proposed definition(s) of "economically equivalent swap". Proposed § 37.10(c)(2) states that "the term 'economically equivalent swap' means a swap that the swap execution facility or designated contract market determines to be economically equivalent with another swap after consideration of each swap's material pricing terms". Similar wording is used under proposed § 38.12(c)(2).
I suggest that these proposed definitions are not complete, and are not necessarily sufficient for the purpose of determining whether swaps are economically equivalent. I would suggest that swaps are economically equivalent if a customer is economically indifferent as to the swaps. This would surely be the case if each swap replicates the expected cash flows of the

other swap in all feasible scenarios (a replicating approach). Conversely, if a swap does not replicate the expected cash flows of another swap in all feasible scenarios, then a customer would not be economically indifferent between the two swaps; therefore the swaps are not economically equivalent. I submit that this expected cash flow approach (a replicating approach) is more complete that the "material pricing terms" approach (although the "material pricing terms" approach, with additional appropriate testing may be sufficient in many cases).

This is an important point because without further quantitative guidance or interpretation, the proposed definition of "economically equivalent swap" is not completely objective, and would actually depend on the SEF's or DCM's own positions, preferences and tolerances. An expected cash flow approach (a replicating approach) is more objective, complete and sufficient in order to determine whether swaps are economically equivalent.

Yours sincerely

C.R.B.

Chris Barnard