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

19 July 2012

- 17 CFR Part 1
- RIN Number 3038-AD06
- Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant"

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your interim final rule: Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant".

In accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) (collectively, the Commissions), in consultation with the Board of Governors of the Federal Reserve System (Board), are adopting new rules and interpretive guidance under the Commodity Exchange Act (CEA), and the Securities Exchange Act of 1934 (Exchange Act), to further define the terms swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, and eligible contract participant.

Comment on CFTC interim final rule 17 CFR 1.3(ggg)(6)(iii)

I support your interim final rule 17 CFR 1.3(ggg)(6)(iii). This excludes swaps entered into for the purpose of hedging physical positions that meet the requirements of the rule from the swap dealer analysis. The rule draws upon the principles of bona fide hedging that you apply to identify when a financial instrument is used for hedging purposes, particularly the wording

of § 17 CFR 1.3(ggg)(6)(iii)(B), which states that: “The swap represents a substitute for transactions made or to be made or positions taken or to be taken by the person at a later time in a physical marketing channel” and § 17 CFR 1.3(ggg)(6)(iii)(C), which states that: “The swap is economically appropriate to the reduction of the person’s risks in the conduct and management of a commercial enterprise”. These should ensure that the hedging result expected / achieved is the result of genuine risk mitigation and economic replication, rather than just spurious or accidental offsetting.

I also support that the hedging exclusion is of the nature of a safe harbour, i.e. it describes activity that will not be considered swap dealing activity. Other types of hedging activity should be considered in light of all other relevant facts and circumstances when determining whether the person is engaging in swap-dealing activity. This is sufficient and complete in order to exclude all genuine business-related hedging activities on a case-by-case basis.

Yours sincerely

C.R.B.

Chris Barnard