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- **17 CFR Part 39**
- **RIN Number 3038-AD47**
- **Clearing Exemption for Certain Swaps Entered Into by Cooperatives**

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your proposed rule: Clearing Exemption for Certain Swaps Entered Into by Cooperatives.

You are proposing a rule pursuant to your authority under Section 4(c) of the Commodity Exchange Act (CEA) allowing cooperatives meeting certain conditions to elect not to submit for clearing certain swaps that such cooperatives would otherwise be required to clear in accordance with Section 2(h)(1) of the CEA. The proposed cooperative exemption is narrowly tailored, and extends only to: Swaps entered into with members of the cooperative in connection with originating loans for members; and Swaps entered into by a cooperative to hedge or mitigate risks associated with member loans or member loan related swaps.

I agree that mandatory central clearing of swaps is a primary focus of Title VII of the Dodd-Frank Act. This amended the CEA by inserting Section 2(h)(1)(A) Standard for Clearing, which states that: "It shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under this Act if the swap is required to be cleared." This is straightforward and clear.

Congress also adopted the end-user exception in Section 2(h)(7) of the CEA to permit non-financial entities to continue using non-cleared swaps to hedge risks associated with their underlying businesses. The CFTC was also directed by Section 2(h)(7)(C)(ii) of the CEA to

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

consider whether to exempt certain entities (small financial institutions) “including” depository institutions, farm credit system institutions and credit unions with total assets of \$10 billion or less from the definition of financial entity. This end-user exception clarifies those entities that were not intended to be the primary targets of the mandatory clearing requirement.

Concerning cooperatives, I would support a look-through approach that would pass through the end-user exception that would be available to the members of the cooperative to the cooperative itself. In my opinion this is reasonable and in line with the statutory intent under Dodd-Frank. I agree with you here that the key point is that: “This provision assures that the cooperative exemption is only used as a pass through for swaps with members who would themselves be able to elect the end-user exception and for swaps that hedge or mitigate risk in connection with member loans and swaps as would be required by Section 2(h)(7)(A)(ii) of the CEA for those member swaps.”¹

One final comment for completeness: Section 2(h)(7)(C)(ii) of the CEA directs the CFTC to exempt certain entities from the definition of financial entity. The use of the word “including” suggests that total assets of \$10 billion does not represent a limit on the size of entity that should be considered for an exemption from the definition of financial entity.

Yours sincerely

C.R.B.

Chris Barnard

¹ See Proposed Rule, 77 FR 41942.