

David A. Stawick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581  
United States  
[www.cftc.gov](http://www.cftc.gov)

Chris Barnard  
Germany

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- **17 CFR Chapter I**
- **RIN Number 3038-AD57**
- **Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act**

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your Proposed interpretive guidance and policy statement: Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act.

You are publishing proposed interpretive guidance and policy statement regarding the cross-border application of the swaps provisions of the Commodity Exchange Act (CEA) that were enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), and the CFTC's regulations promulgated thereunder. In particular, this proposed interpretive guidance and policy statement generally describes the policy and procedural framework under which the CFTC may permit compliance with a comparable regulatory requirement of a foreign jurisdiction to substitute for compliance with the requirements of the CEA (Substituted Compliance).

Concerning jurisdiction, Section 722(d) of the Dodd-Frank Act amends Section 2 of the CEA by adding at the end the following:

- (i) **APPLICABILITY.**—The provisions of this Act relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities—

- (1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or
- (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010.

I would support substance over form with regard to the swaps provisions of the CEA. Economic implications are just as important as legal considerations, as confirmed and intended by Section 2(i)(1) of the CEA, and therefore I would recommend that where swaps are guaranteed by a US person, or where a non-US person is guaranteed by a US person, then the swaps provisions of the CEA should apply to the underlying swaps which are guaranteed. For example:

- under category A, for a Foreign Affiliate of a US Person where the Affiliate is the legal counterparty but all swaps are guaranteed by a US Person, the relevant swaps provisions should apply;
- under category B, for a Foreign Affiliate of a US Person where the Affiliate is the legal counterparty but all swaps are guaranteed by a US Person, the relevant swaps provisions should apply;
- under category B, for all cases where a non-US person is guaranteed by a US person, the relevant swaps provisions should apply;
- under category C, for all cases where a non-US person is guaranteed by a US person, the relevant swaps provisions should apply.<sup>1</sup>

I understand the balancing of interests between comprehensively regulating swaps markets and competitive concerns, but I would ask for your leadership here in ensuring that the swaps provisions of the CEA will apply to all underlying swaps that are guaranteed by a US person. This would certainly ensure consistency and greater compliance with the intent of Section 2(i)(1) of the CEA.

Yours sincerely

C.R.B.

Chris Barnard

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<sup>1</sup> See Category A, Category B and Category C tables in the CFTC proposals, 77 FR 41237 from July 12, 2012.