

Melissa D. Jurgens, Secretary
Commodity Futures Trading Commission
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**- 17 CFR Chapter I
- Request for Comment on Application of Commission
Regulations to Swaps Between Non-U.S. Swap Dealers and
Non-U.S. Counterparties Involving Personnel or Agents of
the Non-U.S. Swap Dealers Located in the United States**

Dear Ms. Jurgens.

Thank you for giving us the opportunity to contribute to your Request for comment: Request for Comment on Application of Commission Regulations to Swaps Between Non-U.S. Swap Dealers and Non-U.S. Counterparties Involving Personnel or Agents of the Non-U.S. Swap Dealers Located in the United States.

You are requesting comment on an advisory issued by Commission staff on November 14, 2013 (the Staff Advisory), regarding the applicability of certain Commission regulations to the activity in the United States of swap dealers (SDs) and major swap participants (MSPs) registered with the Commission that are established in jurisdictions other than the United States (whether an affiliate or not of a U.S. person, a non-U.S. SD or non-U.S. MSP).

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) of the CEA, and therefore I would recommend that for transactions arranged, executed, or negotiated by personnel or agents located in the United States of non-U.S. SDs (whether affiliates or not of a U.S. person) regularly using personnel or agents located in the U.S. to arrange, negotiate, or execute swaps with non-U.S. persons (the Covered Transactions), the non-U.S. SD generally would not be required to comply with the transactional requirements. This is reasonable and would satisfy the “direct and significant”¹ test under CEA section 2(i). Generally the transactional requirements should not apply to Covered Transactions with non-U.S. persons who are not guaranteed or conduit affiliates of U.S. persons. However they should apply to Covered Transactions with non-U.S. persons who are guaranteed or conduit affiliates of U.S. persons; again, this is reasonable and would satisfy the “direct and significant” test under CEA section 2(i).

Yours sincerely

C.R.B.

Chris Barnard

¹ I.e. direct and significant risk to U.S. firms, markets and commerce from such transactions.