

Christopher Kirkpatrick, 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 Part 1**
- **RIN Number 3038-AE24**
- **Forward Contracts With Embedded Volumetric Optionality**

Dear Mr. Kirkpatrick.

Thank you for giving us the opportunity to comment on your Proposed interpretation on Forward Contracts With Embedded Volumetric Optionality.

In accordance with section 712(d)(4) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC), after consultation with the Board of Governors of the Federal Reserve System (Board of Governors), are jointly issuing the CFTC's proposed clarification of its interpretation concerning forward contracts with embedded volumetric optionality.

In response to comments from market participants, you are amending and clarifying the seven-element interpretation concerning forward contracts that provide for variations in delivery amount (embedded volumetric optionality) that you provided in your 2012 Products Release<sup>1</sup>. I support the intent to provide clarity and usability around this interpretation. However, I agree with CFTC Commissioner Sharon Y. Bowen that embedded volumetric options should be exempted as options, not excluded as forwards.<sup>2</sup> This approach would

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<sup>1</sup> See CFTC-SEC joint final rule and interpretations: Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48207, 48238-42 (Aug. 13, 2012).

<sup>2</sup> See Appendix 4 - Concurring Statement of CFTC Commissioner Sharon Y. Bowen, to this proposed interpretation: "I think the objective of providing for clear regulatory treatment of embedded volumetric options will be far easier to implement, and far more complete, if done through fixing the trade option exemption."

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

certainly achieve your objectives of providing clarity and usability concerning the treatment of forward contracts with embedded volumetric optionality. It would also improve regulatory consistency and promote regulatory flexibility, which are of growing importance given the increasing complexity around the development and usage of derivatives by market participants and end-users.

Yours sincerely

C.R.B.

Chris Barnard