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

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- 17 CFR Part 23
- RIN Number 3038-AE84
- Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants

Dear Mr. Kirkpatrick.

Thank you for giving us the opportunity to comment on your notice of proposed rulemaking on Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants.

The CFTC is publishing for public comment a proposed rule addressing the cross-border application of certain swap provisions of the Commodity Exchange Act (CEA), as added by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Specifically, the proposed rule addresses the cross-border application of the registration thresholds and certain requirements applicable to swap dealers (SDs) and major swap participants (MSPs), and establishes a formal process for requesting comparability determinations for such requirements from the CFTC. The CFTC is proposing a risk-based approach that, consistent with section 2(i) of the CEA, and with due consideration of international comity principles and the CFTC's interest in focusing its authority on potential significant risks to the US financial system, would advance the goals of the Dodd-Frank Act's swap reform, while fostering greater liquidity and competitive markets, promoting enhanced regulatory cooperation, and advancing the global harmonization of swap regulation.

I strongly support the CFTC's intent to enhance the financial integrity of the markets, reduce market disruptions, promote the development of sound risk management practices, foster market transparency and improve liquidity and price discovery. I generally support that the proposed rule increases regulatory consistency, however I do have concerns about certain proposed definitions and treatments.

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, and note that economic implications are just as important as legal considerations, as confirmed and intended by Section 2(i)(1) of the CEA. Therefore I question the definition of "guarantee" in the proposed rule, as the proposed definition is narrower than the definition in the 2013 interpretive guidance, and would allow significant risk to be transferred back to the US financial system over time. I also question the establishment of the new "significant risk subsidiary" entity, as this would appear to weaken certain aspects of swaps risk controlling. For example, the notice of proposed rulemaking states that: "Of the 60 non-U.S. SDs that were provisionally registered with the Commission as of December 2019, the Commission believes that few, if any, would be classified as SRSs pursuant to the Proposed Rule".[1] Given this, I am not convinced with the proposed regulatory imbalance that would apply only to significant risk subsidiaries vis-à-vis other non-US persons.

Yours sincerely

C.R.B.

Chris Barnard

[1] 85 FR 992 (Jan. 8, 2020)