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- **17 CFR Parts 3, 23 and 170**
- **RIN Number 3038–AC95**
- **Registration of Swap Dealers and Major Swap Participants**

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your proposed rules: Registration of Swap Dealers and Major Swap Participants.

You are proposing to adopt regulations that would establish the process for registering swap dealers (SDs) and major swap participants (MSPs). The proposed regulations also would require SDs and MSPs (swap entities) to become members of the National Futures Association (NFA) and to confirm that persons associated with them are not subject to a statutory disqualification under the Commodity Exchange Act (CEA). The CFTC is making this proposal in accordance with Section 4s of the CEA, which was recently added to the CEA by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).

I generally support these proposals, and the timeframes contained therein. However I do wish to make some comments concerning the potential extraterritorial application of the proposed rules.

Extraterritorial application

New Section 2(i) of the CEA, which was added by Section 722(d) of Dodd-Frank, states that provisions of the CEA that were enacted by Title VII of Dodd-Frank shall not apply to activities outside the United States unless those activities “have a direct and significant

connection with activities in, or effect on, commerce of the United States”, or contravene rules or regulations that the CFTC may promulgate to prevent evasion. The wording here specifically references “direct”, and this would therefore not cover indirect connections. Furthermore the reference to “direct and significant” clearly implies a high threshold, for example much higher than any de minimis level of swaps dealing required for exemption from designation, and clearly any person whose only connection to the United States was through using a US-registered swap execution facility, designated clearing organization or designated contract market in connection with their swap dealing activities, or by reporting swaps to a US-registered swap data repository, should not be required to register as a swap dealer. However I am not convinced that a person outside the US who engages in swap dealing activities and regularly enters into swaps with US persons should be required to register as a swap dealer. This is not given. I would suggest that this should again depend on the “direct and significant” threshold referenced in the proposed rules.

I would suggest that swap entity activities involving non-US entities or non-US markets could only meet the “direct and significant” condition where they contribute material concentration, counterparty or general systemic risk to the US financial system. This is in keeping with the spirit and intent of Dodd-Frank. I would therefore trust that the CFTC will promulgate an appropriate, objective application here.

Yours sincerely

Chris Barnard