September 17, 2010

David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Secretaries Stawick and Murphy,

This comment letter is being submitted pursuant to SEC and CFTC Release No. 34-62717: Definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act ("Release") under which regulators will promulgate regulations under the Dodd–Frank Wall Street Reform and Consumer Protection Act ("Act") to further define certain terms related to swaps. We appreciate the opportunity to comment on the Release and have several suggestions which we believe will provide clarity to several of the definitions.

1. "Swap Dealer"

The term "Swap Dealer" is defined under Section 721(a)(21) of the Dodd-Frank Act generally as an entity which holds itself out as a dealer, which makes a market in swaps or which regularly engages in swaps in the ordinary course of business for its own account. Section 721(A)(21) also provides a "de minimis" exception to the definition:

> *The Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of this determination to exempt.*

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We request that the regulators promulgate a regulation providing specific guidance regarding the term "de minimis".

Since the language of the law indicates that de minimis exception will apply based upon a certain quantity of swap dealing, we request that the Commission define "de minimis" as 500 or fewer swaps per year. We believe that in order to be considered a "dealer", a party should be consistently in the market throughout every trading day and that 500 swaps should not cause a party to rise to the level of a "dealer" under the Act.

Additionally, there is precedent for defining "de minimis" as under 500 trades annually. Under Section 201 of the Gramm Leach Bliley Act, a bank that effects...not more than 500 transactions in securities in any calendar year" is exempted from the definition of "broker" pursuant to the "de minimis exception". We believe that the SEC and CFTC should take a similar position pursuant the regulation of swaps.

2. "Eligible Contract Participant"

Section 1a(18) of the Commodity Exchange Act, as re-designated and amended by Sections 721(a)(9) and 741(b)(10) of the Dodd-Frank Act states that in order to qualify as an Eligible Contract Participant ("ECP"), a customer must meet one of the several qualifications (including, but not limited to, being a financial institution, a regulated insurance company, an investment company, a broker/dealer and an entity with assets of more than $10 million or equity of more than $1 million). While we understand and agree with these qualifications, we request guidance regarding the continuing existence of the "business line exception". This exception was promulgated by the CFTC under its 1989 Policy Statement which stated that swap agreements are not regulated as futures contracts if they have:

- individually tailored terms
- an absence of exchange style offset,
- an absence of a clearing organization or margin system,
- been undertaken in conjunction with the parties' line of business, and
- not been marketed to the public.

It is unclear under the Act whether the CFTC and the SEC will allow this exception to continue to exist. As a result, we request clarity regarding the exception outlined 1989 Policy Statement, especially as it relates to various special purpose entities which are formed for the purpose of developing commercial properties and other similar ventures. These entities may not meet the qualifications required to be eligible to be an ECP but may desire to enter into to swaps in conjunction with the financing of their developments. In order to guard against speculation, the CFTC and the SEC could narrow the exception by limiting the business line exception to swaps used for hedging by the entities.

Since the purpose of the Act and its regulations is to monitor systemic risk - especially risk associated with various derivatives used for non-hedging purposes - leaving this exception in place would have the benefit of continuing to allow the use of swaps for pure hedging purposes by those who are spurring economic growth. We do not believe that allowing the line of business exception to continue to exist would add material risk to the system but that eliminating this exception may curtail economic development going forward.

In the event that the CFTC and the SEC do not allow the business line exception to continue to exist, we request that the CFTC and the SEC consider promulgating a new regulation for these special purpose entities by utilizing the current definition for "accredited investors" found under Rule 501 of Regulation D under the Securities Act of 1933, as amended. Specifically, Rule 501 defines an "accredited investor", in part, as:

- Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000; or

- Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year; and

- any entity in which all of the equity owners are accredited investors.

Utilizing this "accredited investor requirement" would allow entities which do not technically qualify as ECPs under the Act to continue to utilize swaps while giving regulators comfort that swap participants are sophisticated investors. This is especially important for a special or limited purpose entity which is utilizing a swap with uniquely tailored terms for hedging and funding purposes and not for speculation or investment. The absence of such a regulation likely would increase funding costs for smaller developers and reduce potential economic growth in the coming years.

We thank you again for the opportunity to comment on the Release and appreciate your willingness to consider our suggestions.

Sincerely,

Leo Pylypec
Managing Director