

February 22, 2011

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

RE: RIN number 3038-AD10 / End-User Exception to Mandatory Clearing of Swaps  
RIN 3038-AD06 / RIN 3235-AK65 – Definitions  
File Number S7-39-10

Dear CFTC:

I am writing to express my views regarding the CFTC's proposed rule on the end-user exception to the mandatory clearing of swaps and other issues. The CFTC has asked whether financial institutions under \$10 billion should be exempted from the mandatory clearing of swaps, which is a provision contained in the Dodd-Frank Act. I believe that they should.

Congress inserted this provision into the law because it was clear they believed such an exception would be prudent. CFTC and SEC have testified before Congress that the derivatives section is to prevent systemic risk issues related to the risky derivatives that aided greatly in the financial crisis. However, the types of swaps used by smaller financial institutions are generally very low-risk swaps such as interest rate swaps. From a bank's perspective, most of these swaps are customized to match the underlying nature of the loan the bank has made. These are not the risky swaps that AIG engaged in or the complex derivatives that Wall Street investment firms created and therefore they do not pose the risks to the financial system that warrant monitoring. CFTC's budget is tight and scarce agency resources should be targeted on the real problem-complex derivatives of large institutions that utilize derivatives in large volumes.

It is also extremely important that the CFTC (and SEC) do not impose increased capital requirements for customized swaps that community banks use – that would be disastrous and curtail the legitimate use of derivatives by community banks. This would ultimately ensure that many current customers of community banks would transfer their borrowing activities to large financial institutions which have the volumes to attract the attention of the clearing houses. The clearing houses won't bother with clearing the small swaps (both notational value and volume of business) of community banks for many years. The exemption should be applied to both the mandatory clearing of community bank's swaps and to ensuring that margin and capital requirements do not exceed those of cleared swaps for community banks' customized swaps utilized in the OTC market. These are largely interest rate swaps and don't pose risks to our financial system. Otherwise, capital and margin requirements could drive community banks out of the swaps market – which was not the intent of Congress as clarified in the legislative history.

The exemption of the swaps should apply throughout the duration of the loan not just those initiated at origination. The swap is intended to cover the same risk management purpose, whether initiated at the beginning of the loan or at some later point. Finally, for determining

legitimate hedging, CFTC should focus on an economic concept since accounting concepts don't cover mortgage servicing. My comments also apply to relevant proposals from the SEC.

Sincerely,

Jack A Hartings

CC: SEC

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