

BG Group meeting with CFTC staff

Washington, D.C.

June 22, 2011



Agenda

- Introduction
- Definitions
- Hedging or mitigating “commercial risk”

Definitions

- Proposed interpretation of swap dealer is too broad
 - Commission should develop a definition of swap dealer to cover activities that constitute dealing
 - Guidance should focus on entities that present systemic risk
- Final rule must recognize the distinct roles that dealers and traders play in swap markets
 - Accommodating demand for underlying commodity v. swaps
 - Swaps trading activity incidental to physical commodity business
 - Distinguish between transacting for your own benefit or 3rd party

Definitions

- Examples of swaps activity that is not “dealing:”
 - Swaps that hedge or mitigate commercial risk
 - Swaps that are directionally consistent with underlying physical positions
 - Willingness to enter into swaps periodically with customers tied to underlying physical commodity business
 - Structured physical transactions with a swap component
 - Provide two-sided pricing in illiquid markets for price discovery purposes

Definitions

- Proposed *de minimis* exemption unduly restrictive
 - Adoption of relative test based on percentage of the market is more commercially practical
 - Use of a relative test will avoid unintended consequence of driving smaller players out of the market
 - Use of a relative test will enhance liquidity and bring efficiencies to swap markets

Hedging or mitigating “commercial risk”

- Guidance in footnote 128 of the MSP definition and footnote 23 of the end-user exemption proposed rules eliminates the ability of marketers and merchandisers to treat swaps that mitigate price risk of underlying physical trading positions as hedges of “commercial risk”
- Congress did not intend to treat hedges for producing, processing, merchandising or consuming disparately
- Interpretive guidance in footnotes 128/23 as applied to physical trading positions is also inconsistent with the statutory definition of bona fide hedging transaction in Section 737 of Dodd-Frank
- Revise interpretive guidance in footnotes 128/23 to clarify that producers, processors, commercial users and merchants may treat such swaps as hedges of “commercial risk”