

From: Kim Hovanes <khovanes@bfcmi.com>
Sent: Monday, November 22, 2010 11:22 AM
To: OTCDefinitions <OTCDefinitions@CFTC.gov>
Cc: Alistair Fyfe <afyfe@bfcmi.com>; Derek Beitzel <dbeitzel@bfcmi.com>
Subject: Eligible Contract Participant
Attach: CFTC letter regarding ECP.pdf

Attached please find a letter from the Principals at B&F Capital Markets regarding Eligible Contract Participant.

Thank you!

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B&F CAPITAL MARKETS, INC.

November 22, 2010

Mr. David Stawick, Secretary
Commodity Futures Trading Commission
Via Electronic Mail

RE: Eligible Contract Participant Definition

Dear Mr. Stawick:

We are writing to you regarding the definition of Eligible Contract Participant under the Commodities Exchange Act as modified by the recent Dodd-Frank legislation. Our company, B&F Capital Markets, headquartered in Cleveland, Ohio, manages and implements interest rate swap programs for approximately 20 regional and community banks throughout the U.S. with asset sizes ranging from \$100 million to \$15 billion. As Principals, we have a combined 40 years experience in the swap market working primarily with small and medium sized commercial borrowers.

Our bank clients use interest rate swaps as the primary vehicle to provide long-term fixed rates to their commercial borrowers. Swaps provide these borrowers with access to longer-term fixed rates than banks would otherwise offer due to the increased interest rate risk associated with traditional fixed rate loans. Swaps also provide rate structuring flexibility which is beneficial to both the banks and their borrowers.

Historically, commercial borrowers have qualified as swap participants in one of two ways:

1. By meeting the definition of an Eligible Contract Participant (“ECP”) under the Commodity Exchange Act
2. By qualifying for the “Line of Business Exemption” under the CFTC’s 1989 Policy Statement Concerning Swap Transactions

Many commercial borrowers are structured as pass-through entities such as Subchapter-S Corporations or Limited Liability Company’s and consequently maintain minimal equity at the entity level. Because the amount of equity in these entities is often below the \$1MM threshold needed to qualify as an ECP, banks have relied on the Line of Business Exemption in order to provide long-term fixed rates through swaps to many of their borrowing customers. Most of these entities would qualify as ECP’s if they were structured as sole proprietorships; however, few companies today are structured this way due to the legal and tax advantages of pass-through entities.

Section 723 of the Dodd-Frank Act makes it illegal for anyone who is not an Eligible Contract Participant to enter into an interest rate swap. We believe that this language will preempt the Line of Business Exemption and preclude many of the bank’s borrowers from having access to the interest rate swap product. This would exclude from the swap market entities that have used this product without major issues or problems for over 20 years. Indeed, interest rate swaps have become an integral part of the commercial loan business, and this

has been specifically recognized by lawmakers by providing distinctive exclusions from the “Swap Dealer” definition for banks that use swaps to support their commercial lending activities.

We respectfully request that the Commission use the power granted to it under Section 721 of the Dodd-Frank Act to further define Eligible Contract Participant such that pass-through entities will continue to have access to the swap market. If this change is not made, there will be less long-term fixed rate financing available to middle market companies, and small and regional banks will be at a competitive disadvantage relative to larger financial institutions such as banks, insurance companies and conduit financial vehicles.

We would be glad to make ourselves available should you have any questions or concerns about the above request.

Sincerely,



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