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”