

February 22, 2011

Mr. David A Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Ms. Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Definition of “Major Swap Participant”; Securities Exchange Act Release No. 63452; Securities Exchange Commission File No. S7-39-10; RIN 3038-AD06

Dear Mr. Stawick and Ms. Murphy:

China Investment Corporation (“CIC”) appreciates the opportunity to comment on the Securities and Exchange Commission (“SEC”) and Commodity Futures Trading Commission’s (“CFTC” and, together with the SEC, the “Commissions”) proposal (the “Definitions Proposal”) to further define the term “major swap participant”¹ (“MSP”) and certain other terms under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act” or “Dodd-Frank”).² Our comments are focused on the Commissions’ request for input regarding whether sovereign wealth funds (“SWFs”) or other entities linked to foreign governments should be excluded from the term major swap participant.³

¹ For purposes of this letter, the term “major swap participant” refers to major swap participants, regulated by the CFTC, and major security-based swap participants, regulated by the SEC. In addition, the term “swaps” refers to both “swaps,” regulated by the CFTC, and “security-based swaps,” regulated by the SEC.

² Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant,” 75 FR 80174 (proposed Dec. 21, 2010) (amending 17 CFR Pt. 240).

³ *Id.*, at 80203.

As discussed below, we believe SWFs⁴ should be excluded from the MSP definition, particularly in light of policies underlying Dodd-Frank's regulation of MSPs, and principles of comity and respect for sovereignty expressed in Dodd-Frank and other applicable law. Moreover, because the relief requested in this letter is limited to regulation of SWFs as MSPs, and does not extend to other critical provisions of Dodd-Frank (such as mandatory clearing, exchange trading and trade reporting requirements), to the extent of the jurisdictional reach of such provisions, such relief would not undermine the central elements of Dodd-Frank's swap regulation regime.

I. CIC

CIC is an investment institution established as a wholly state-owned company under the Company Law of the People's Republic of China and headquartered in Beijing. CIC's mission is to make long-term investments that maximize risk adjusted financial returns for the benefit of its shareholder.⁵

II. Discussion

A. *Subjecting SWFs to MSP Regulatory Requirements Would Conflict with Norms of Sovereignty and International Comity*

We believe SWFs should be excluded from the MSP definition in accordance with principles of comity and respect for sovereignty.

Dodd-Frank explicitly recognizes the principle of international comity. For example, regulators are required to consider the extent to which a foreign entity is comprehensively regulated in its home country before deciding whether to extend U.S. regulation to that entity.⁶ In addition, U.S. regulators are required to consult

⁴ The reference to SWFs in this letter also refers to any controlled entities through which SWFs make investments.

⁵ CIC has subscribed to the Santiago Principles, a set of generally accepted principles and practices for sovereign wealth fund investment practices and objectives adopted by the International Working Group of Sovereign Wealth Funds. As a subscriber to the Santiago Principles, CIC is committed to disclosing information relating to its "economic and financial orientation" to the extent that such disclosure does not conflict with the requirements and national interests of the Chinese government.

⁶ See, e.g., Dodd-Frank Act § 725(b) (CFTC may exempt a derivatives clearing organization from registration for the clearing of swaps if it is already subject to "comparable, comprehensive supervision and regulation by . . . the appropriate government authorities in the home country of the organization."); § 733 (CFTC may exempt a swap execution facility from registration on similar grounds); § 763(b) (SEC may exempt a clearing agency that clears security-based swaps from registration on similar grounds); § 738(a) (CFTC must make similar considerations in determining whether to permit a foreign board of trade to provide identified (...continued)

with non-U.S. regulators before making certain decisions that could affect a foreign-regulated entity.⁷ Moreover, the U.S. Supreme Court has previously recognized the importance of interpreting statutes in accordance with principles of international comity.⁸ These provisions of Dodd-Frank focus on situations where a non-U.S. private enterprise may warrant lighter regulatory treatment in the U.S. because of its home country regulatory obligations. SWFs present an even clearer cut case for international comity, therefore should be excluded from the definition of MSP and not be subject to the extensive regulatory framework established by Title VII.

B. Excluding SWFs from the MSP Definition Would Not Raise Systemic Risk Concerns and Would Not Diminish Important Transparency and Other Safeguards Required by Title VII of Dodd-Frank

One of the primary goals of the regulatory regime promulgated by Title VII is to reduce systemic risk. MSP regulation, in particular, is intended to address specific risks present in the swaps market. Specifically, Congress determined to regulate MSPs to “focus on risk factors that contributed to the recent financial crisis, such as excessive leverage, under-collateralization of swap positions, and a lack of information about the aggregate size of positions.”⁹ SWFs do not implicate these concerns. CIC makes long-term investments across diverse asset classes. CIC may use swaps to manage its portfolio risks, but does not use swaps

(continued...)

members or other participants located in the U.S. with direct access to its electronic trading and order matching system); § 113(b)(2)(H) (Financial Stability Oversight Council must undertake a similar consideration in determining whether a foreign nonbank financial company shall be supervised by the Federal Reserve and be subject to prudential standards); *see also* Dodd-Frank Act §§ 121(d); 165(b)(2); 174(b)(3).

⁷ *See, e.g.*, Dodd-Frank Act § 113(f) (requiring the Financial Stability Oversight Council to consult with the appropriate home country supervisor of a foreign nonbank financial company before making certain determinations); § 113(i) (“In exercising its duties . . . with respect to foreign nonbank financial companies, foreign-based bank holding companies, and cross-border activities and markets, the [Financial Stability Oversight Council] shall consult with appropriate foreign regulatory authorities, to the extent appropriate.”); *see also* § 175(c).

⁸ *See F. Hoffmann-La Roche Ltd v. Empagran S.A.*, 542 U.S. 155, 164-65 (2004) (“[The Supreme] Court ordinarily construes ambiguous statutes to avoid unreasonable interference with the sovereign authority of other nations [This approach] helps the potentially conflicting laws of different nations work together in harmony — a harmony particularly needed in today’s highly interdependent commercial world.”); *Morrison v. National Australia Bank Ltd.*, 130 S. Ct. 2869, 2877 (2010) (“[U]nless there is the affirmative intention of the Congress clearly expressed’ to give a statute extraterritorial effect, ‘we must presume it is primarily concerned with domestic conditions.’”)(citations omitted).

⁹ 156 Cong. Rec. S5907 (daily ed. July 15, 2010).

as a way of generating returns (as other investors, such as hedge funds, may do, including by making highly-leveraged investments).

In addition, Title VII's overarching goal of bringing transparency to the swaps market would not be diminished by excluding SWFs from the MSP definition. In particular, subject to Title VII's otherwise applicable extraterritorial limits, any participant in the U.S. swaps market, including SWFs, would be subject to requirements such as the following:

- mandatory clearing for swaps required to be cleared by the SEC or CFTC;¹⁰
- mandatory exchange trading of any swap that is required to be cleared (subject to various exceptions);¹¹
- position limits adopted by the SEC or CFTC;¹² and
- large swap trader reporting.¹³

Thus, the Commissions could exclude SWFs from the MSP definition without sacrificing the broader and more general protections that Title VII seeks to provide to the swaps market. Moreover, CIC, and we suspect many other SWFs, generally conduct their swaps activities with dealers, which will be regulated as MSPs, and therefore it is not necessary to subject SWFs to duplicative regulation and supervision.

III. Conclusion

For the reasons discussed above, the Commissions should exclude SWFs from the definition of MSP.

¹⁰ Dodd-Frank Act § 723 (prohibiting “any person” from engaging in a swap that is required to be cleared unless the swap is submitted for clearing); Dodd-Frank § 763 (analogous provision for security-based swaps).

¹¹ Dodd-Frank Act § 723 (requiring all “counterparties” to execute swaps subject to the clearing requirement on a designated contract market or swap execution facility, subject to certain exceptions); Dodd-Frank Act § 763 (analogous provision for security-based swaps).

¹² Dodd-Frank Act § 737 (providing the CFTC authority to adopt position limits applicable to “any person”); Dodd-Frank Act § 763 (analogous SEC authority).

¹³ Dodd-Frank Act § 730 (providing the CFTC authority to adopt large swap trader reporting rules applicable to “any person”); Dodd-Frank Act § 763 (analogous SEC authority).

Respectfully yours,



Wang Jianxi
Executive Vice President & CRO

cc: **Ms. Jennifer J. Johnson**
Secretary, Board of Governors of the Federal Reserve System