



**Rabobank**

April 5, 2011

Mr. David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
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Washington DC 20581

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Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20551

Re: **Application of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act to the Global Swap Dealing Operations of Foreign Banks**

Dear Mr. Stawick and Ms. Johnson:

Rabobank Nederland<sup>1</sup> appreciates the opportunity to offer our views to the Commodity Futures Trading Commission (the “**CFTC**” or the “**Commission**”) and the Board of Governors of the Federal Reserve System (the “**Federal Reserve**”) regarding the application of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Dodd-Frank Act**”) to the global swap dealing operations of foreign banks. In particular, we wish to express our strong support for a number of industry comment letters on this important topic.

Rabobank Nederland strongly supports the comment letters submitted: (i) on January 10, 2011, by the Institute of International Bankers regarding U.S. regulation of the cross-border swap activities of foreign banks (the “**IIB Letter**”);<sup>2</sup> (ii) on January 11, 2011, by a group of seven international banks discussing the benefits of the centralized booking model for swaps and providing a rule-by-rule analysis of how Title VII’s swap dealer requirements could be applied to a foreign bank swap dealer

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<sup>1</sup> Rabobank Nederland is an international banking organization that serves over 10 million customers across 48 countries. In terms of tier 1 capital, it is among the world’s 25 largest financial institutions. All rating agencies have awarded Rabobank Nederland their highest possible rating. In addition to its global swaps business, Rabobank Nederland, through its U.S. subsidiaries, also provides banking products to small businesses, farmers and ranchers, food and agribusiness companies and other select institutions across the United States. Rabobank Nederland is comprehensively regulated and supervised by its home country prudential regulator, the Dutch National Bank (De Nederlandsche Bank).

<sup>2</sup> Available at <http://www.sec.gov/comments/s7-39-10/s73910-8.pdf>.

in a manner that preserves these benefits;<sup>3</sup> and (iii) on February 17, 2011, by a group of twelve international financial institutions, including Rabobank Nederland and the seven banks that wrote the January 11 letter, containing a proposal that would allow comprehensively regulated foreign banks to continue to book their swaps using a centralized booking model in a manner that would not subject them to duplicative or inconsistent U.S. and foreign regulations as well as a detailed discussion of the legal authority under Title VII to implement the proposal.<sup>4</sup>

A centralized booking model for global swap dealing activities, as described in the January 11 and February 17 comment letters (the “**Foreign Bank Swap Dealer Letters**”), promotes the policy objectives of Title VII by reducing systemic risk through centralized and efficient risk management, credit, documentation, operations and systems and by simplifying any orderly resolution process. Under this model, U.S. counterparties, including commercial end-users, that choose to enter into bespoke, non-cleared swaps can do so with well-capitalized and highly-rated international banks, thus reducing their credit risk. However, international banks cannot continue to use the centralized booking model if the Commission’s regulations implementing Title VII would subject such foreign bank swap dealers to requirements that are redundant or conflict with applicable non-U.S. rules. If that were the case, many international banks would have no choice but to use jurisdiction-specific special purpose entities to engage in swap dealing activities. Such entities would present greater risk to U.S. counterparties and to the financial system for the reasons provided in the IIB Letter and the Foreign Bank Swap Dealer Letters.

As set forth in the IIB Letter and the Foreign Bank Swap Dealer Letters, one way of preserving the benefits of the centralized booking model is for a *non-U.S. branch* of a foreign bank to register as a swap dealer *solely* with respect to its swap dealing activities with U.S. persons. Under this scenario, Title VII’s transaction-level rules<sup>5</sup> would apply *only* to the non-U.S. branch’s swap dealing activities with U.S. persons and would not apply to its other activities or to the swap activities of other parts of the foreign bank. With respect to Title VII’s capital requirement for swap dealers, the Federal Reserve would rely on the capital standards set by the foreign bank’s home country supervisor if: (i) the foreign bank

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<sup>3</sup> Available at <http://www.sec.gov/comments/s7-39-10/s73910-9.pdf>.

<sup>4</sup> Barclays Bank PLC, BNP Paribas S.A., Credit Suisse AG, Deutsche Bank AG, HSBC, Nomura Securities International, Inc., Rabobank Nederland, Royal Bank of Canada, The Royal Bank of Scotland Group plc, Société Générale, The Toronto-Dominion Bank and UBS AG, Comment Letter to the CFTC, SEC and Federal Reserve (February 17, 2011) Available at <http://www.sec.gov/comments/s7-39-10/s73910-25.pdf>.

<sup>5</sup> A number of commenters, including the group of twelve international financial institutions, have distinguished between rules that apply to swap dealers at the entity level (such as capital and risk management) and transaction-level rules that regulate particular swap transactions and swap dealing activities (such as business conduct standards and transaction-related recordkeeping).



has been determined by the Federal Reserve to be subject to “comprehensive consolidated supervision” or (ii) the home country supervisor has adopted risk-based capital standards consistent with the Capital Accord of the Basel Committee on Banking Supervision. Moreover, the Commission would rely on comparable<sup>6</sup> home country standards with respect to other Title VII entity-level requirements that apply to swap dealers including risk management, conflicts of interest and recordkeeping regarding corporate, financial and compliance matters.

In addition, the non-U.S. branch registrant would use one or more U.S. affiliates as agents in arranging swaps with U.S. persons and would be permitted to delegate certain compliance functions to its U.S. affiliates, although such delegation would not relieve the non-U.S. branch registrant of its ultimate compliance responsibilities. Where necessary, the U.S. affiliates would register as futures commission merchants or introducing brokers, broker-dealers or swap dealers depending upon their respective roles in soliciting transactions, receiving customer margin, performing delegated compliance functions, effecting transactions as an agent on exchanges and swap execution facilities and in OTC markets, or clearing customer transactions.

Limiting Title VII’s transaction-level rules to the non-U.S. branch registrant’s swap dealing activities with U.S. persons and relying on home country entity-level supervision in the manner described above would avoid, to a significant extent, the simultaneous application of inconsistent or irreconcilable U.S. and foreign rules to international banks that operate under a centralized booking model. As a result, these banks would, as a practical matter, be able to continue to centrally book their swaps, thus benefiting their U.S. customers, regulators and the financial system as a whole. As discussed in greater detail in the February 17 comment letter submitted by the group of twelve international financial institutions, the regulatory approach outlined above is within the Commission’s and Federal Reserve’s legal authority under Title VII, is consistent with the letter and spirit of the Dodd-Frank Act, promotes the statute’s underlying policies and does not require the use of any exemptive authority.

Rabobank Nederland understands that the Commission and the Federal Reserve are in discussion with the European Commission regarding mutual recognition of regulatory requirements and supervision. These discussions are of great importance in light of European initiatives such as the proposed European Market Infrastructure Regulation and revision of the Markets Infrastructure Directive on Financial Instruments, which broadly cover the same topics as Title VII the Dodd-

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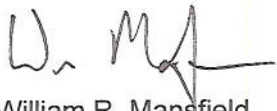
<sup>6</sup> We note that in issuing Rule 30.10 exemptions to foreign intermediaries and granting no-action relief to foreign boards of trade, the CFTC has adopted a “comparability” analysis that looks to whether a foreign regulatory authority “supports and enforces substantially equivalent regulatory objectives, such as prevention of market manipulation and customer protection.” Proposed Rule - Registration of Foreign Boards of Trade, 75 Fed. Reg. 70,974, 70,977-78 (Nov. 19, 2010).

Frank Act. We hope that these discussions will be fruitful and will result in a level playing field for U.S. and European banks without subjecting them to overlapping or conflicting swaps regulations and supervision. We believe the regulatory approach outlined above and in the IIB Letter and the Foreign Bank Swap Dealer Letters will facilitate harmonization of U.S. and European swap regulations.

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We appreciate the opportunity to share our views and look forward to working with the Commission and the Federal Reserve on issues related to the application of Title VII to the global swap dealing operations of foreign banks such as Rabobank Nederland. We would also be available at any time to discuss these and any matters with the Commission and the Federal Reserve. Please feel free to contact the undersigned or Lanny A. Schwartz (212-450-4174), Robert L.D. Colby (202-962-7121), Arthur S. Long (212-450-4742) or Courtenay U. Myers (212-450-4943) at Davis Polk & Wardwell LLP with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Mansfield', with a horizontal line extending to the right.

William R. Mansfield  
Managing Director, Head of Global Financial Markets Americas  
Rabobank Nederland