July 22, 2011

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

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

File No. S7-16-11: Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping

Re: Loan Participations and Loan Index Swaps

Dear Ms. Murphy and Mr. Stawick:

The Loan Syndications and Trading Association (the "LSTA") appreciates the opportunity to provide further comments to the Commodity Futures Trading Commission (the "CFTC") and the Securities and Exchange Commission (the "SEC," and together with the CFTC, the "Commissions") concerning the treatment of loan participations and loan-based swap products under the Wall Street Transparency and Accountability Act of 2010 ("Dodd-Frank")[1] in the Commissions' above-referenced joint proposed rules and proposed interpretations published on May 23, 2011 (the "Proposed Interpretations").[2]

We are grateful to the Commissions for their attention to our prior comments[3] relating to the clarification of the status of loan participations under Dodd-Frank, as well as for the opportunity to address and attempt to clarify the treatment of loan index swaps and certain other loan-based swap products under Dodd-Frank.

[1] Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Pub. L. 111-203 (July 21, 2010).
[2] 76 Fed. Reg. 29,818 (May 23, 2011).
[3] See Letter from the LSTA (January 25, 2011), *available at* http://www.sec.gov/comments/s7-16-10/s71610-136.pdf; and Letter from the LSTA (March 1, 2011), *available at* http://www.sec.gov/comments/s7-16-10/s71610-152.pdf.

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We refer to and endorse the comment letter (the "LMA Letter") submitted by the Loan Market Association (the "LMA") on the date hereof which outlines (i) the key concerns of the LMA and the LSTA regarding the Commissions' interpretive guidance in the Proposed Interpretations with respect to loan participations, as well as (ii) the joint LMA and LSTA proposal for modifications to such guidance in order to provide clarity to the global syndicated loan market. We submit this letter in order to (i) support in full (but do not believe it necessary to repeat) the views presented in the LMA Letter and provide additional information regarding the LSTA's concerns with the application of the Proposed Interpretations to loan participations in the U.S. syndicated loan market, and (ii) address an additional point of concern in the global syndicated loan market by requesting clarity regarding the regulatory treatment of loan index products and certain other loan-based swap products.

I. Loan Participations

We are concerned that the current formulation of the Commissions' guidance regarding loan participations will not provide adequate comfort and certainty to the global syndicated loan market that loan participations will not be regulated as "swaps" or "security-based swaps."[4] Along with the LMA, we are proposing revisions to the Commissions' guidance in order to achieve additional clarity while preserving the Commissions' authority to regulate all swaps and security-based swaps.

Background on Loan Participations and the Commissions' "True Participation" Requirement

We support the view of the LMA that both LSTA-style and LMA-style loan participations are distinguishable from loan total return swaps ("LTRS") because (i) a grantor of a loan participation must represent that it owns the underlying loan, and (ii) a loan participant purchases the participation by paying the full purchase price for the loan and does not gain leveraged access to the loan. We agree with the LMA that these characteristics follow from the fact that loan participations are used as alternative methods of loan transfer, and not as swaps.

We also agree that the "true participation" requirement set forth in the Commissions' guidance regarding loan participations in the Proposed Interpretations will create confusion and regulatory uncertainty in the global syndicated loan market not only by unintentionally excluding all LMA-style participations, but also by using definitional terminology that may be interpreted by participants in the U.S. loan market to exclude certain LSTA-style participations. Because the "true participation" analysis is a U.S. accounting and bankruptcy law formulation used to

[4] As the Commissions suggested in the Proposed Interpretations, if a loan participation otherwise falls within the definition of "security" or "identified banking product," then such a loan participation would be excluded from the definitions of "swap" and "security-based swap." We also refer to the 23 February 2011 letter filed by the LMA (*available at* http://www.sec.gov/comments/s7-16-10/s71610-151.pdf) and the January 25, 2011 letter filed by the LSTA (*see* note 3, *supra*), where we highlight the view that loan participations, at least when granted by banks, should be included in the definition of "identified banking products" which Dodd-Frank specifically excludes from regulation as "security-based swaps." Because an important goal of Dodd-Frank is to treat functionally or economically similar instruments alike and not create or retain artificial distinctions between like products, we believe Congress intended to exclude all loan participations, including those where the grantor is not a bank, from the regulatory scope of Dodd-Frank.

distinguish sales of assets from financings, we believe using this test to distinguish a sale from a swap in the global loan market is inappropriate.

Loan market participants in the United States will likely interpret the "true participation" feature of the guidance in the Proposed Interpretations as a requirement that loan participations must qualify for "true sale" treatment in order to avoid classification as a "swap." A "true sale" or "true participation" analysis is a test aimed at determining whether a transaction has resulted in the underlying assets being legally isolated from the transferor's creditors for U.S. bankruptcy law purposes.[5] Its underlying purpose is to distinguish between a sale and a financing, not between a sale and a swap. That a transaction may be determined under a "true sale" analysis to be a financing, and not a true sale or true participation, should not mean that such transaction should be characterized as a "swap." For example, a secured loan between a lender and a borrower would clearly be characterized as a financing and not a true sale. However, it does not follow that, because such a loan failed the "true sale" test, it should also be viewed as a swap. Therefore, a different test is necessary to determine whether loan participations should be characterized as swaps.

The memoranda cited by the Commissions in footnote 116 of the Proposed Interpretations outline two differing views of this "true participation," or "true sale," analysis. These memoranda highlight the use of this test in distinguishing between transfers and financings for bankruptcy and accounting treatment purposes, and illustrate the fact that this test is subject to varying legal interpretations.[6] In addition, these memoranda illustrate the fact that the "true sale" analysis has developed under common law in the United States to inform U.S. bankruptcy and accounting analyses. We believe that a test that remains subject to varying legal interpretations is not well-suited for transactional certainty in the loan market and, further, that a test that has been developed in the common law in the United States cannot give unambiguous guidance to a global loan market in which many participants are unfamiliar with the analysis.

For these reasons, as well as the reasons cited in the LMA Letter, we believe that the "true participation" requirement does not accurately characterize all loan participations that are commonly used in the global syndicated loan market. Instead, this requirement focuses on a subset of U.S. loan participations that achieve certain accounting and bankruptcy treatment under a U.S.-focused test, and is therefore not an appropriate mechanism to distinguish between swaps and loan participations.

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[5] In this regard, U.S. courts, based on judicial doctrine, will examine the substance of a transaction, rather than its form, in order to determine whether the parties intended to legally isolate the assets from the transferor's creditors and, in fact, did so isolate such assets.

[6] For example, the memorandum authored by Richard M. Gray and Suhrud Mehta of Milbank Tweed Hadley & McCloy LLP cites four factors for determining when a participation should be viewed as a financing as opposed to a "true participation," while the memorandum authored by Cleary, Gottlieb, Steen & Hamilton (the "Cleary Memo") cites seven factors. In addition, the Cleary Memo states on page 11, "[i]t must be emphasized that, as is the case with true sale issues generally, different counsel will place different weight on the various factors set forth above..."

Loan Participations vs. LTRS

The LSTA supports the discussion in the LMA Letter regarding the distinctions between loan participations and LTRS. In an LSTA-style participation, much like the LMA-style participation, the grantor must represent that it owns the loan and the full "purchase price" for the loan must be paid on the date of the participation. We believe these key distinctions illustrate that loan participations, unlike swaps, are used as transfer instruments in the loan market and do not present the risks created by swaps and targeted by Dodd-Frank.[7]

Proposed Modifications to Proposed Interpretations

The LSTA and the LMA jointly propose that the Commissions revise the Proposed Interpretations to provide that they do not interpret Dodd-Frank's "swap" and "security-based swap" definitions to include loan participations in which:

(i) the purchaser is acquiring a current or future direct or indirect ownership interest in the related loan or commitment;[8] and

(ii) the agreement pursuant to which the purchaser is acquiring such an interest:

(a) is a participation agreement that is, or any similar agreement of a type that has been, is presently, or in the future becomes, customarily entered into in the primary or secondary loan markets;

(b) requires the grantor to represent that it is a lender under, or a participant or sub-participant in, the loan or commitment;

(c) provides that the participant is entitled to receive from the grantor all of the economic benefit of the whole or part of a loan or commitment to the extent of payments received by the grantor in respect of such loan or commitment; and

(d) requires that 100% of the purchase price calculated with respect to the loan or commitment is paid on the settlement date.

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[7] We note that the Commissions have requested comments regarding whether swaps and security-based swaps are partly or fully defeased (or paid in full). We understand that, unlike loan participations, total return swaps do not contemplate payment in part or in full by the total return receiver. Instead, the total return receiver is obligated to make collateral payments during the life of the swap to support its payment obligations upon termination. Even if the total return receiver makes capital depreciation payments to the total return payer over the life of the swap, as opposed to collateral payments supporting such a payment obligation upon termination, the swap cannot be considered "defeased" since future payment obligations may arise based on the fluctuation in the value of the underlying loan. In contrast, subsequent fluctuations in the value of a loan do not trigger payment obligations under a loan participation. We also note that we are not aware of any loan total return swaps under which the total return receiver is required to post collateral sufficient to support 100% of its potential payment obligations.

[8] We have added the language "or commitment" to the Commissions' original guidance in order to clarify the fact that loan participations are entered into both with respect to outstanding loans and with respect to lenders' commitments to lend and fund letters of credit (*e.g.*, under a revolving credit facility.)

We believe this revised guidance will provide comfort to syndicated loan market participants that traditional and customary loan participations that are used as an alternative method of transferring loan assets will not inadvertently be regulated as "swaps" or "security-based swaps," while preserving the Commissions' robust authority to regulate all swaps and security-based swaps, including LTRS.[9]

II. Treatment of Loan Index Swaps

In addition, we would like to address the concerns of many participants in the global loan market by requesting revisions to or clarifications of the Proposed Interpretations to provide certainty regarding the classification of various loan index swaps and other loan-based swaps.[10] Participants in the global syndicated loan market use loan-based swap products that are specifically tailored to the syndicated loan asset class. The most commonly used loan-based derivatives are LTRS and loan-based credit default swaps ("LCDS"), both of which are used in single-name form and as index products in the United States and Europe.[11] We agree that both products fall under Dodd-Frank's regulatory framework and that single-name swaps are "security-based swaps," but we request that the Commissions address the current lack of clarity regarding which other types of loan-based swaps will be regulated by the CFTC as "swaps" and which will be regulated by the SEC as "security-based swaps." We do not take a position in this letter on which Commission should have jurisdiction over these loan-based swaps, but rather request a clear and appropriate set of definitional distinctions.

Clear regulatory guidance regarding these loan-based swap transactions is important to the global loan market in order to ensure compliance in an efficient and cost-effective manner. Because we expect there will be differences in the regulatory treatment of swaps and security-based swaps, participants in the global loan market will need to implement systems and procedures to ensure timely compliance with the specific requirements of each of the Commissions on a product-by-product basis. Further, should definitional ambiguities remain after the rules become effective, the loan market could experience costly conflicts among transacting parties who disagree as to the proper classification of various loan-based swaps. We believe the current Proposed Interpretations do not provide syndicated loan market participants with sufficient clarity to allow them adequately to prepare for regulatory oversight.

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[9] In addition, in response to discussions with the Commissions regarding the application of guidance regarding loan participations to collateralized loan obligations ("CLOs"), we highlight the fact that CLOs and loan participations are completely different instruments. In a typical CLO transaction, a special purpose vehicle (referred to as the CLO) issues securities in different classes or tranches to investors, and uses the proceeds of the sale of those securities to purchase a pool of loans. We believe the proposed revised guidance regarding loan participations does not apply to CLOs because, among other things, (i) CLOs are not structured as participation agreements between CLOs and their respective investors; (ii) CLOs do not agree to convey a participation interest to their investors in the whole or part of a loan or commitment; and (iii) CLO investors do not pay a purchase price for the loans, but instead pay a purchase price for the securities issued by the CLO.

[10] We refer to, and agree with the concerns raised in, the comment letter submitted to the Commissions by Allen & Overy LLP on May 26, 2011 (the "A&O Letter") relating to, *inter alia*, the treatment of loan index swaps under the Proposed Interpretations. See the A&O Letter, *available at* http://www.sec.gov/comments/s7-16-11/s71611-4.pdf.

[11] We use the term "loan-based swaps" to refer generally to all LCDS and LTRS.

Summary of Key Issues

As further described below, we believe the Commissions should confirm or clarify the following issues:

(i) clarification regarding whether, and under what circumstances, an LTRS[12] or an LCDS referencing more than one loan could be treated as a "security-based swap,"

(ii) confirmation that, and clarification regarding the circumstances under which, an LCDS referencing more than one borrower[13] will be treated as a "security-based swap,"

(iii) assuming the Commissions bifurcate regulatory oversight over swaps referencing multiple loans or borrowers (as applicable) in a manner consistent with the framework provided for swaps referencing multiple securities, issuers of securities and indexes thereof, clarification regarding what guidance the Commissions will use in defining "narrow-based security index" as such term applies to loans or borrowers of loans (as applicable) referenced by LTRS and LCDS products, and, in particular:

> (a) clarification with respect to how the proposed rules regarding the meaning of "narrow-based security index" and "issuers of securities in a narrow-based security index" should be modified or interpreted in order to provide clear guidance for both LTRS and LCDS market participants, and
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> (b) clarification with respect to how the proposed public information availability requirements should be modified or interpreted in their application to loan-based swaps, and

(iv) confirmation that the Commissions will treat LTRS and LCDS transactions subject to the same "Master Confirmation" but different "Supplemental Confirmations" as individual transactions and not as an "index."

Definitional Uncertainty under Dodd-Frank and the Proposed Interpretations

Dodd-Frank specifies that "security-based swaps" will generally be regulated by the SEC while "swaps" will generally be regulated by the CFTC. Dodd-Frank defines "security-based swap" to include a swap that is based on:

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[12] We note that LTRS transactions generally reference a loan and not a borrower. For this reason, we have not requested regulatory clarity with respect to LTRS that reference one or more borrowers.

[13] We note that the widely-traded standardized version of North American LCDS is generally viewed as a product that is based on a particular borrower, and not based on a particular loan, because the "credit events" that trigger protection include a default by the borrower on a broad set of its debt obligations. However, the standardized version of European LCDS, as well as certain bespoke LCDS transactions, are instead viewed as being based on a particular loan, because the "credit events" that trigger protection include defaults relating solely to the referenced loan. In order to seek comprehensive guidance from the Commissions, we refer to, and seek clarification regarding, both methods for structuring an LCDS in this letter.

"(I) an index that is a narrow-based security index...;

(II) a single security **or loan**...; or

(III) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index..."[14]

While the statutory definition above clearly references swaps based on a single loan in prong (II), it does not explicitly provide whether swaps that reference an index of loans are covered in prong (I). Thus, under one possible statutory reading, a loan-based swap (whether LTRS or LCDS) that references a single loan would be treated as a "security-based swap" regulated by the SEC, while a similar loan-based swap that references two loans would be treated as a "swap" regulated by the CFTC. This would be inconsistent with the treatment of swaps that reference securities, which will be treated as "security-based swaps" whether based on one or two securities.

Furthermore, prong (III) of the definition of "security-based swap" does not clearly reference borrowers of loans or indexes of borrowers. Because we believe that most borrowers that are named as reference entities in LCDS transactions are corporate entities that issue equity interests to one or more shareholders (although, as discussed below, they may not issue public securities or become subject to public reporting requirements), we believe prong (III) can be interpreted to include swaps that reference a single borrower or borrowers of loans in an index.[15] However, because prong (III) only expressly refers to swaps that reference "issuers of securities," we request clarification regarding the treatment of loan-based swaps (including both LCDS and, as applicable, LTRS) that reference one or more borrowers.

As described above, the classification of certain loan-based swaps, particularly those referencing indexes of loans or certain indexes of borrowers, is not clear under Dodd-Frank. Unfortunately, the Proposed Interpretations do not clarify the treatment of such products. Further, while the Commissions propose modifications to the established guidance defining "narrow-based security index" in order to determine whether a credit default swap ("CDS") that references an index of securities or issuers of securities will be treated as a security-based swap due to a determination that its index composition is "narrow-based," the Commissions do not address whether or how this guidance should be applied to loan-based swaps (both LTRS and LCDS) that reference indexes of loans or borrowers. Finally, if the Commissions' proposed modified definitions are intended to be applied to loan-based swaps, we note that these definitions incorporate public information availability requirements that may not be appropriate for the syndicated loan market where many borrowers are not issuers of publicly traded securities

[14] See Section 761(a)(6) of Dodd-Frank (emphasis added).

[15] We believe the Commissions may hold the same view based on our review of the current Proposed Interpretations. See the Proposed Interpretations at 29,847 ("A CDS where the underlying reference is a single entity (*i.e.*, a single-name CDS)…would be a security-based swap.") Although this statement may indicate the Commissions' intent to treat LCDS that reference one borrower as a security-based swap, in this letter we request clarity on this point and on the treatment of LCDS referencing a portfolio of borrowers of loans.

and, therefore, may not be subject to broad public disclosure requirements. We discuss each of these concerns in further detail below.

Guidance Regarding "Narrow-Based Security Index" and "Issuers of Securities in a Narrow-Based Security Index" and Public Information Availability Requirements

The Commissions propose new rules, based on existing guidance, for defining "narrow-based security index" and "issuers of securities in a narrow-based security index" for purposes of determining whether a derivative instrument that references an index of securities should be treated as a "security-based swap" under prong (I) or (III) of the Dodd-Frank definition set forth above. The Commissions propose both general rules and a special set of rules for index CDS.

The Commissions' new rules draw upon the existing guidance applicable to indexes of debt securities in establishing certain core requirements,[16] and incorporate modified public information availability requirements. In the context of the index CDS rules, for example, the Commissions generally provide that an index CDS will be classified as a "security-based swap" subject to SEC regulation if any of the index's components (subject to a *de minimis* exception described below) fails to meet at least one of the public information availability criteria listed in their proposed rules.[17] The Commissions have taken the view that these public information availability requirements are needed to reduce susceptibility of referenced indexes to manipulation and to prevent the misuse of material non-public information through the use of instruments referencing such indexes.[18]

As highlighted above, the Proposed Interpretations do not provide clarity that these definitions are intended to govern loan-based swaps referencing indexes of loans or borrowers, since on their face the definitions apply only to indexes of securities and issuers of securities.

Application of Public Information Availability Requirement to Loan Market Swaps

Not all borrowers in the global loan market have access to the equity or debt securities markets – indeed, for some borrowers, the loan market is their primary source of capital. Many of these "private" borrowers are not required to publicly disclose financial or other information because they do not issue securities and, thus, publicly available information may be limited.

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[16] The Commissions propose, for example, that in order for a swap referencing an index of securities or issuers of securities to be deemed as referencing a "narrow-based security index" or "issuers of securities in a narrow-based security index" and therefore to be treated as a "security-based swap," the index must generally either (i) contain 9 or fewer non-affiliated components (securities or issuers); (ii) contain a single component (security or issuer) which comprises more than 30% of the index's weighting; (iii) contain any five components (securities or issuers) which comprise more than 60% of the index's weighting; or (iv) fail to meet certain public information availability requirements. See generally the Proposed Interpretations at Sections III.G. and III.G.3.(b).

[17] The criteria listed include (among others): (i) the relevant entity is required to file reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934; (ii) the relevant entity has a worldwide market value of outstanding common equity held by non-affiliates of $700 million or more; or (iii) the relevant entity has outstanding debt securities having a total remaining principal amount of $1 billion. See the proposed CFTC rules §§ 1.3(zzz)(1)(i)(D) and 1.3(aaaa)(1)(i)(D) and the proposed SEC rules Parts 240.3a68-1a(a)(1)(iv) and 240.3a68-1b(a)(1)(iv) (each with respect to index CDS.)

[18] See the Proposed Interpretations at 29,848 (in reference to index CDS).

Loans made to "private" borrowers, or the borrowers themselves, as the case may be, may be included as components of loan-based swaps referencing indexes of loans, and therefore any test that requires analysis of the publicly available information regarding such borrowers becomes difficult and potentially problematic for the global syndicated loan market.

The Commissions' current definitional tests provide that an index will be considered to be "narrow-based" if its components generally fail to meet the proposed public information availability requirements, subject to *de minimis* exceptions for lightly weighted components that are not compliant with those requirements.[19] While we believe that the current index relating to the standardized North American LCDS index product ("LCDX") satisfies the public information availability requirements in the Commissions' current proposed guidance, we note that (i) the LCDX index is subject to revision on a regular basis and therefore going-forward classification is uncertain, (ii) bespoke loan portfolio products created by banks and other entities to hedge risk on portfolios of loans may include borrowers whose loans are less widely held and less likely to be subject to public disclosure requirements, and (iii) the standardized European LCDS index product ("iTraxx LevX") may generally contain a larger percentage of "private" borrowers given that fewer European entities, as a general matter, access public securities markets than borrowers in the United States.

The determination as to whether a particular set of loans or borrowers meets the Commissions' proposed public information availability requirements to determine whether an index is narrow-based or broad-based may be significantly more costly in the loan market than in the context of analyzing securities indexes whose underlying securities components are generally subject to national or exchange-based reporting and disclosure regimes. The difficulty and possible subjectivity of this determination could create regulatory uncertainty regarding which set of regulations applies to LCDS or LTRS based on a particular index. In addition, unlike securities, which are issued by a single issuer, a single loan may be extended to multiple borrowers. For this reason, particularly in the context of LCDS or LTRS that reference a loan and not a borrower, it may be burdensome and difficult to determine which of various borrowers that are party to a loan meet, or are required to meet, the public information availability requirements with respect to that loan. Therefore, any determination with respect to multiple borrowers will result in additional cost and uncertainty to loan market participants.

For these reasons, we request that the Commissions reconsider the public information availability requirements generally in the context of loan-based swaps. First, we request that the Commissions consider removing this requirement entirely as applied to loan-based swaps given that the framework, which was originally designed to address securities indexes, may be inapposite as applied to the loan market. We believe that participants in the global loan market are sophisticated, that there is a need for both standardized and bespoke index products in the loan market, and that while regulation of swaps referencing indexes of loans is appropriate,

[19] See the proposed CFTC rules §§ 1.3(zzz)(2) and (aaaa)(2) and the proposed SEC rules Parts 240.3a68-1a(b) and 240.3a68-1b(b) (exempting any security or issuer component provided that (i) the effective notional amount allocated to any such component comprises less than 5% of the index's weighting and (ii) the effective notional amounts allocated to compliant components comprise at least 80% of the index's weighting.)

demarcation of regulatory authority based on a public information availability test may not be workable.

If the Commissions determine that the proposed public information availability test should have some application to loan-based swaps, then we request that the Commissions address certain areas of their guidance that lack clarity as applied to the loan market.

For example, we note that the Commissions' current proposed rules regarding public information availability requirements in the context of index CDS[20] contain an additional alternative public information test criterion providing that a component in an index CDS can meet the public information availability requirements if the index CDS is entered into between two "eligible contract participants," as defined in the Commodity Exchange Act, and, among other things, financial information about the relevant issuer is "otherwise publicly available."[21] We expect that many loan-based swaps will generally be entered into between eligible contract participants, though we note that it is unclear how "otherwise publicly available" should be interpreted – both generally and with respect to loan indexes in particular. Therefore, it is unclear whether this prong would ultimately be instructive in any application to loan market swaps.

Other Issues

We believe the Commissions should also provide additional clarity regarding the factors they will use in distinguishing between an aggregation of individual swap transactions and a single transaction referencing a "group or index." The Commissions have stated that they "believe that a number of single-name CDS that are executed at the same time and that are documented under one ISDA Master Agreement, but in which a separate confirmation is sent for each CDS, should be treated as an aggregation of security-based swaps" and that they "believe that each such CDS would be a separate and independent transaction….[and thus] would constitute multiple single-name CDS."[22]

First, we request that the Commissions provide clarity as to whether they will use the same factors to distinguish between single-name and index total return swap (or other swap) transactions. Second, we believe that this guidance should also be instructive in connection with the market's use of a "Master Confirmation" structure, where the same general terms reflected in a "Master Confirmation" apply to a number of swaps referencing separate securities, loans, issuers or borrowers, while a separate "Supplemental Confirmation" is sent for each separate component. We interpret the Commissions' guidance to mean that, although multiple transactions may be subject to the same terms through the application of a "Master Confirmation," where a separate "Supplemental Confirmation" is sent for each individual

[20] We note that this additional alternative criterion appears only to apply to index CDS and does not appear to apply to other swaps, including TRS. We would request that the Commissions clarify whether this alternative criterion should be interpreted to have broader application.

[21] See proposed CFTC rules §§ 1.3(zzz)(1)(i)(D)(8)(ii) and (aaaa)(1)(i)(D)(8)(ii) and proposed SEC rules Parts 240.3a68-1a(a)(1)(iv)(H)(2) and 240.3a68-1b(a)(1)(iv)(H)(2).

[22] See the Proposed Interpretations at page 29,843.

transaction, each such transaction will be viewed as a separate transaction and not as an "index" or "group." Confirmation or clarity on this point from the Commissions would be helpful to the loan market.

III. Conclusion

The LSTA, jointly with the LMA, proposes the revisions to the Proposed Interpretations relating to loan participations set forth above. We believe that this revised guidance will help provide regulatory clarity to the global syndicated loan market while preserving the Commissions' regulatory authority over total return swaps and other derivative instruments. Separately, we believe the Commissions should provide revised guidance relating to loan-based swaps, particularly those referencing indexes of borrowers or syndicated loans, in order to resolve significant regulatory uncertainty that currently exists in the Proposed Interpretations. We support the A&O Letter in this regard and have attempted to provide further background regarding this important issue in this letter. We remain available to discuss and answer any questions the Commissions may have.

We would be pleased to discuss any of the points addressed in this letter. I can be reached directly at 212.880.3001 or Elliot Ganz, our General Counsel, at 212.880.3003.

Very truly yours,

THE LOAN SYNDICATIONS AND
TRADING ASSOCIATION

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