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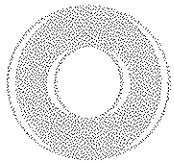

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington D.C. 20581

Re: Capital Requirements of Swap Dealers and Major Swap Participants, RIN 3038-AD54

Dear Mr. Stawick:

Macquarie Group Limited ("MGL") appreciates the opportunity to submit its comments in response to the Commodity Futures Trading Commission's (the "CFTC") Notice of Proposed Rulemaking and Request for Comment (the "Proposed Rules") regarding capital requirements for swap dealers ("SDs") and major swap participants ("MSPs") under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").[1] We support the steps that the CFTC has taken to implement a risk-based approach to capital requirements that makes appropriate use of supervisory resources by leveraging existing regulatory regimes.

Based on the CFTC's proposed rules regarding registration of SDs and MSPs, we believe that one or more of MGL's subsidiaries may be subject to registration as an SD and, in that event, will be subject to the requirements of the Proposed Rules, including the obligation to prepare financial statements in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP"). For the reasons set forth below, it is anticipated that the adoption of these requirements will impose substantial costs and burdens on Macquarie Bank Limited ("MBL"), the principal bank subsidiary of MGL, and other subsidiaries of MGL, with no corresponding benefit to the CFTC's oversight of the capital adequacy of SDs. Accordingly, any reasonable analysis of the costs and benefits of the requirements under the Proposed Rules and the alternatives addressed herein will support the

[1] Capital Requirements of Swap Dealers and Major Swap Participants, 76 Fed. Reg. 27802 (May 12, 2011). Although this letter is being submitted after the end of the official comment period, we note the CFTC's discretion to accept and review comments submitted after that date. Because this submission addresses a discrete aspect of the proposed rule, we respectfully request the CFTC's consideration of the issues raised in the letter.

permissibility of accepted international standards. We therefore respectfully request that the CFTC permit non-U.S. registrants to prepare the required financial statements in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board ("IASB"), ("IFRS"), rather than requiring that such statements be prepared only in accordance with U.S. GAAP. Because IFRS is an internationally recognized standard that is comparable to U.S. standards, and provides the CFTC and market participants with all of the protections and safeguards of the Proposed Rules, we believe that the approach recommended herein will better serve the CFTC's objectives and permit non-U.S. entities to operate as SDs and MSPs in the U.S. market.

To achieve this objective, we urge the CFTC to:

1. Extend the approval of internal capital models to include approval of calculation and reporting of an SD's or MSP's capital in accordance with IFRS; or
2. Extend the recognition of prudential regulatory regimes to include foreign regulators that supervise non-U.S. entities and have imposed comparable capital regimes. Specifically, we request that the CFTC allow such non-U.S. banks to comply only with the non-U.S. regulatory regimes to which they are subject in all respects, including capital requirements and capital calculations, instead of and in satisfaction of the CFTC's Proposed Rule.

We are requesting these changes to the final rules given that:

1. IFRS, as issued by the IASB, is widely accepted internationally[2], including by the U.S. Securities and Exchange Commission ("SEC"), and acknowledged as high quality standards, that are appropriate for recognition by the CFTC;
2. the costs involved in preparing U.S. GAAP accounts are anticipated to be substantial and the benefits gained from requiring a foreign prudentially regulated bank and its non-bank subsidiaries to report in accordance with U.S. GAAP, rather than comparable, internationally recognized standards, do not justify the anticipated cost involved in converting their accounts to (and maintaining such accounts in) U.S. GAAP[3]; and
3. the recognition of IFRS accounts would be consistent with the ongoing convergence of U.S. GAAP and IFRS.

We also respectfully request the opportunity to meet with representatives of the CFTC to discuss this letter and the steps that MGL can take to assist the CFTC in its consideration of these issues.

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[2] Approximately 120 nations and reporting jurisdictions permit or require International Financial Reporting Standards for domestic listed companies, and approximately 90 countries have fully conformed with IFRS as promulgated by the IASB.

[3] In light of these concerns, MGL highly supports and endorses the comments submitted by Sarah A. Miller, Chief Executive Officer, The Institute of International Bankers, re: Title VII Capital and Margin Proposals, July 1, 2011.

Background
MBL, a subsidiary of Macquarie Group Limited, is an Australian bank regulated by the Australian Prudential Regulation Authority ("APRA") and is subject to comprehensive capital requirements imposed by APRA. MBL and its subsidiaries, including U.S. subsidiaries that report their results within MBL's consolidated balance sheet, prepare their financial statements in accordance with both Australian GAAP and IFRS, as issued by the IASB.[4] In 2005, the Australian Accounting Standards Board changed the financial reporting standards from Australian GAAP to IFRS, which resulted in the imposition of considerable costs on MBL in order to comply with the new requirements. The capital regime implemented by APRA is comparable to those adopted by other prudential regulatory authorities and consistent with the approach set forth under the Proposed Rules.

The CFTC has not yet issued its final rules regarding registration of swap dealers and MSPs and we are therefore unable to determine definitively whether MBL and/or its affiliates will be required to register in either capacity. However, based on the CFTC's proposed rules on registration, we believe that MBL and/or one or more of its subsidiaries may be subject to registration as a swap dealer and, in that event, will be subject to the requirements of the Proposed Rules.

Capital Requirements Under the Proposed Rules
The Proposed Rules distinguish between three categories of SDs and MSPs:

i. SDs and MSPs that are subject to prudential regulation by a U.S. regulator, such as the Board of Governors of the Federal Reserve System (the "Board") or the Office of the Comptroller of the Currency;
ii. SDs and MSPs that are also futures commission merchants ("FCMs"); and
iii. SDs and MSPs that are not-FCMs and not prudentially regulated.

SDs and MSPs in the third category are required to maintain tangible net equity ("TNE") equal to at least $20 million, plus a charge for market risk and over-the-counter derivatives credit risk, all as calculated under U.S. GAAP.

Under the Proposed Rules, SDs or MSPs may apply to the CFTC for approval to use internal models to calculate their market risk exposure and over-the-counter derivatives credit risk if the SD or MSP is:

- a subsidiary of a US bank holding company and their internal models have been reviewed and are subject to regular assessment by the Federal Reserve Board;
- a security-based swap dealer or major security-based swap participant registered with the SEC and its internal models have been reviewed and are subject to regular assessment by the SEC; or
- approved by written order from the CFTC (after the effective date of the Proposed Rules) as eligible to apply to use internal models.

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[4] MBL is required under the Corporations Act to submit annual and half-yearly accounts within three months and 75 days, respectively, after its balance sheet date (ss319 and 320 of the Corporations Act, 2001).

The Proposed Rules do not permit an entity, while subject to a foreign regulatory regime, that is not subject to one of the above three categories, to use an internal model to calculate their capital charges. However, in the release accompanying the Proposed Rules (the "Release"), the CFTC solicited comment regarding whether it would be appropriate to permit SDs and MSPs to use internal models for computing market risk and counterparty credit risk charges for capital purposes if such models have been approved by a foreign regulatory authority and are subject to periodic assessment by such foreign regulatory authority, and if so, under what criteria.[5] We strongly believe that foreign SDs subject to a comparable capital regime, and operating under the supervision of a foreign regulator that oversees compliance with that regime in accordance with internationally recognized standards, should similarly be permitted to use internal models.

MBL and its subsidiaries are subject to comprehensive prudential regulation by APRA in relation to capital, liquidity and governance. APRA has implemented the Basel Committee of Banking Supervision's regulatory capital framework and has committed to the implementation of the Basel III capital and liquidity frameworks.[6] APRA's regulatory capital rules encompass all of MBL's swaps activity and related hedging activity. MBL is also a member of the Sydney Futures Exchange ("SFE"), which the CFTC has determined administers a comparable regulatory program for market participants under its supervision, sufficient to warrant an exemption for its members granted under CFTC Part 30.[7] MBL itself has been granted exemption from CFTC registration requirements for foreign brokers pursuant to CFTC Part 30, based on its compliance with APRA regulatory requirements, including capital requirements, and the requirements imposed by SFE.

On these bases, MBL believes that it should be permitted, and requests the CFTC's confirmation that it will be permitted, to apply to the CFTC for recognition of its internal capital models. We believe that the calculation of regulatory capital in accordance with APRA's prudential capital framework, based on IFRS financial accounts, meets the CFTC's objective of ensuring that SDs and MSPs are sufficiently capitalized "to ensure their safety and soundness, and that address the risk associated with uncleared swaps entered into by swap dealers and MSPs" and ensures the use of consistent and accepted standards for financial calculation and reporting.

Financial Reporting Requirements Under the Proposed Rules

The Proposed Rules would require SDs and MSPs to file with the CFTC unaudited financial statements within 17 business days of the end of each month and annual audited financial statements within 90 days of the end of the SD's or MSP's fiscal year.[8]

The Release states that the "proposed financial statements would be required to be prepared in accordance with generally accepted accounting principles as established in the United States,

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5 76 Fed. Reg. 27818

6 The Basel III final framework is set forth in two documents released by the Basel Committee on December 16, 2010: *Basel III: A global regulatory framework for more resilient banks and banking systems* and *Basel III: International framework for liquidity risk measurement, standards and monitoring*.

7 *See* 53 Fed. Reg. 44856 (Nov. 7, 1988); 58 Fed. Reg. 19210 (Apr. 13, 1993); 62 Fed. Reg. 10447 (Mar. 7, 1997); 71 Fed. Reg. 403952, (July 17, 2006).

8 76 Fed. Reg. 27838.

using the English language, and in U.S. dollars."[9] Finally, swap dealers and MSPs would be required to file additional financial or operational information and prepare and keep current ledgers or other similar records showing each transaction affecting the entity's liability, income, expense and capital accounts, with such accounts to be determined in accordance with GAAP.

We recognize and appreciate the need for comprehensive and standardized financial recordkeeping and reporting requirements for SDs and MSPs to facilitate the new Dodd-Frank regulatory regime. However, the requirement to file financial statements (and maintain records) in accordance with U.S. GAAP will create a substantial, and potentially punitive, financial and operational challenge for MBL and its related entities that currently report their financial statements (and maintain their books and records) in accordance with IFRS and not U.S. GAAP, as MBL's information systems, accounting policies and employee skill sets are based on compliance with Australian GAAP and IFRS.

Furthermore, we believe that any subsidiary that registers as a SD or MSP and files financial reports on a consolidated basis with a parent entity should not be required to prepare its own set of audited financial statements, as that requirement would eliminate the benefit to the subsidiary of filing on a consolidated basis. We believe this relief should also extend to a subsidiary that is relying on a parental guarantee, and such subsidiary swap dealer or MSP should be permitted to file the audited financial statement of the parent entity in compliance with the Proposed Rules We note that each of the subsidiaries that are SDs will still be able to calculate their regulatory capital requirements each month, even if the accounts are not being filed.

U.S. Regulators Currently Permit the Use of Financial Reports Prepared Under IFRS
The SEC issued a final rule in 2007 to permit foreign private issuers to provide financial statements to the SEC prepared in accordance with IFRS, without reconciliation to U.S. GAAP.[10] As noted in the release accompanying its final rules on this issue (the "SEC Adopting Release"), the SEC has undertaken several measures to foster the use of IFRS and believes "that it is appropriate to adopt these amendments at this time because we expect our acceptance of IFRS financial statements without a GAAP reconciliation will encourage more foreign issuers to prepare financial statements in accordance with IFRS."[11] The SEC Adopting Release explicitly notes that the adoption of the final rules may "serve as an incentive to encourage the use of IFRS as issued by the IASB, as well as to support their development as a truly globally accepted set of high-quality accounting standards."[12]

For example, in August 2008, the SEC issued a proposed rule that potentially would allow U.S. issuers, in addition to foreign issuers, to use financial statements prepared under IFRS (the "IFRS

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9 76 Fed. Reg. 27813.

10 Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards Without Reconciliation to U.S. GAAP, SEC Releases 33-8879; 34-5702 (March 4, 2008).

11 SEC Release at 12.

12 SEC Release at 12.

Roadmap").[13] To facilitate this process, the SEC met in February 2010 to discuss issues relating to the use of IFRS by public companies in the United States, approved a Commission Statement that summarizes some of the feedback on the proposed IFRS Roadmap, and outlined an approach going forward to permit U.S. issuers to use financial statements prepared under IFRS.[14] The SEC remains focused on this issue and the SEC staff held a roundtable in early July 2011 to discuss benefits and challenges in potentially incorporating IFRS into the financial reporting system for U.S. issuers.[15]

As discussed above, the CFTC, based on the Part 30 exemption it has extended to MBL, effectively treats financial statements prepared in accordance with IFRS as having a quality comparable to financial statements prepared in accordance with U.S. GAAP. Given that the use of financial reports prepared in accordance with IFRS is permitted by the SEC, and in light of the implicit recognition of IFRS accounts by the CFTC through the Part 30 exemption, we strongly believe that this treatment should extend to the financial reports required to be filed under the Proposed Rules.

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13 Roadmap for the Potential Use of Financial Statements Prepared in Accordance With International Financial Reporting Standards by U.S. Issuers, SEC Release Nos. 33-8982; 34-58960, DATE.

14 Commission Statement in Support of Convergence and Global Accounting Standards, SEC Release No. 33-9109 (Feb. 24, 2010).

15 To facilitate this process, the SEC is currently considering whether, when, and how the current financial reporting system for U.S. issuers should be transitioned to a system incorporating IFRS. *See* Work Plan for the Consideration of Incorporating International Financial Reporting Standards into the Financial Reporting System for U.S. Issuers, SEC Staff Paper, Office of the Chief Accountant, May 2011.

On-Going Efforts to Converge U.S. GAAP and IFRS

The acceptance of financial statements prepared in accordance with IFRS would be consistent with and supportive of the movement towards converging accounting standards to promote a uniform accounting standard for all market participants. Beginning in 2006, the IASB and the Financial Accounting Standards Board ("FASB") began work towards implementing a memorandum of understanding to achieve the convergence of accounting standards under IFRS and U.S. GAAP, with the goal of ultimately making their respective standards fully compatible.[16] Currently, the IASB and the FASB are working on improving a number of financial reporting topics to achieve a common accounting framework. The IASB and FASB have begun to publish final standards with future mandatory effective dates and it is expected more final standards will be issued in 2012, although their mandatory effective dates remain unknown.

These efforts were lauded during the recent G-20 summit in 2010, when the leaders of the G-20 re-emphasized the importance of "achieving a single set of improved high quality global accounting standards and called on the International Accounting Standards Board and the Financial Accounting Standards Board to complete their convergence project by the end of 2011."[17] In addition, the SEC continues to fully support the efforts of the IASB and FASB to converge their accounting standards.[18]

In light of these coordinated efforts by U.S. and international authorities, we urge the CFTC similarly to accept financial statements prepared in accordance with IFRS, which we expect in the medium term (*i.e.* the next five years) will start to be substantially the same as those prepared in accordance with U.S. GAAP. Accepting IFRS will minimize the risk and substantial effort that affected market participants regulated by the CFTC under Dodd-Frank would have to maintain two different sets of accounting records during this convergence period.

Negative Implications for MBL If Required to Report in U.S. GAAP

As discussed above, MBL transitioned from reporting its financial statements in accordance with Australian GAAP to IFRS. This conversion process was both lengthy and costly. Based on this experience, MBL anticipates that the costs of preparing financial statements in accordance with U.S. GAAP, in addition to IFRS, would be more significant and would require substantial modifications to MBL's systems and business processes and the retraining of MBL's finance staff. Furthermore, this process would have to be repeated for various MBL entities that are included in the consolidated financial statements with MBL, as well as separate legal entities that are affiliates of MBL.[19]

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16 For an update on the progress to date of IASB-FASB convergence, *see* Progress report on IASB-FASB convergence work (April 2011).

17 *See* paragraph 38 of the Framework for Strong, Sustainable and Balanced Growth, available at http://www.g20.org/Documents2010/11/seoulsummit_declaration.pdf.

18 SEC Release at 6. *See also*, Statement in Support of Convergence and Global Accounting Standards by the United States Securities and Exchange Commission (SEC) in February 2010, SEC Release No. 33-9109 (Feb. 24, 2010).

19 MBL has nearly 800 global subsidiaries that operate in an extensive range of countries and regions such as Australia, Ireland, Canada, United Kingdom, United States, Sweden, South Africa, Singapore, Korea, Japan, Hong Kong, France and Brazil.

Based on MBL's transition from Australian GAAP to IFRS in 2005, MBL has estimated that it would take approximately four to five years for MBL to transition from IFRS to U.S. GAAP, and would involve investments to change reporting and IT systems, hiring additional employees and training existing employees to prepare financial statements in accordance with U.S. GAAP,[20] reviewing existing structures and products for compliance with U.S. GAAP, and audit fees for statements prepared under U.S. GAAP. The transition would also require changes to accounting policies and procedures, the development of additional or modified financial reporting systems and comprehensive training of accounting, legal, financial reporting and management personnel. After transition, and on an annual basis, MBL anticipates a gradual reduction in its additional costs of preparation due to the FASB and IASB continuing to progress with their convergence efforts. MBL's estimated timeframe reflects its understanding of the additional complexity and steps needed to prepare financial statements under U.S. GAAP, the length of time that US respondents are suggesting it could take for them to prepare under IFRS, and the length of time it took MBL to transition from Australian GAAP to IFRS in 2005 (given that Australia was in the more opportune position of the Australian Accounting Standards Board already having implemented a harmonization program with IFRS some years earlier). These very substantial changes would be imposed in addition to the increased costs and burdens associated with compliance with the Dodd-Frank regulatory regime.

Consideration of the Costs and Benefits of the Proposed Rules

Finally, we note that the CFTC is required by law to consider the relative costs and benefits of any regulations that it adopts and that a federal court has recently struck down an unrelated SEC regulation on this basis.[21] In our view, an analysis of the costs and benefits associated with the Proposed Rules, if they are applied to MBL (and any similarly situated entities) in the form proposed, clearly leads to the conclusion that the anticipated substantial costs of compliance outweigh, by a considerable margin, any potential benefits that may be obtained, and that the CFTC's objectives can readily be accomplished through the approaches described above, without imposition of such costs. On this basis, and pursuant to the standard established under the *Business Roundtable* case, we do not believe that the Proposed Rules can be adopted and applied to MBL in their current form. As discussed above, MBL is currently subject to a comparable regulatory regime that is based on accepted international standards that have been recognized by the SEC, as well as implicitly by the CFTC, the cost of complying with the Proposed Rules is anticipated to be substantial and the benefits, given the protections afforded under the current system, will be minimal, at most. Under such circumstances, we do not believe that adoption of the Proposed Rules, and their application to MBL and any other similarly situated

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[20] As discussed in the IFRS Roadmap, the SEC acknowledged that many companies (including MBL in transition from IFRS to U.S. GAAP) likely would need to provide: comprehensive training, including the personnel of issuers and their governing bodies, such as their audit committees and board of directors; specialists, such as actuaries and valuation experts, as they often are engaged by management to assist in measuring certain assets and liabilities for financial reporting purposes; and attorneys, who will need to understand financial statements in order to, for example, advise on disclosures required under the securities laws and provide legal representations to external auditors. IFRS Roadmap, at 29.

[21] *See Business Roundtable and Chamber of Commerce of the United States of America* v. *SEC*, No. 10-1305 (D.C. Cir. 2011).

entities, can be justified and we respectfully urge the CFTC to reconsider the proposal on this basis as well.

Conclusion

We are greatly concerned that duplicative financial reporting requirements will place a significant and unnecessary financial and regulatory burden on MBL in comparison to the benefit that the CFTC will receive in obtaining US GAAP information, as opposed to IFRS information. Therefore, we strongly urge the CFTC to allow the preparation of financial statements in accordance with IFRS by either:

- expanding the approval of internal models to include the IFRS accounting standards upon which those calculations are based; or more broadly by
- recognising the regulatory capital and accounting framework of APRA regulated banks and their subsidiaries as satisfying the Proposed Rules.

Such an approach would be consistent with Section 752 of Dodd-Frank[22] and the coordination efforts of the G-20 and the Basel Committee. Additionally, we believe that our approach is consistent with the principle articulated by Mr. Dan Berkowitz, General Counsel of the Commission, at the public roundtable on August 1, 2011: "We must also consider the circumstances in which international comity may affect the application of Dodd-Frank provisions extraterritorially and how such considerations will affect the application of the Act outside the U.S."

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[22] Section 752 of Dodd-Frank requires the CFTC, in order to promote effective and consistent global regulation of swaps, to consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of swap entities.

MGL appreciates the opportunity to submit these comments in connection with the Proposed Rules. Please do not hesitate to contact Mr. Gus Wong (at 212 231 1581) or Ms. Michelle Broom (at 212 231 1558) with any questions or if we can be of assistance to the CFTC.

Sincerely,

Mr. Greg Ward
Chief Financial Officer