FIFTH THIRD BANK
REGIONS FINANCIAL CORPORATION

November 4, 2011

David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581
dfadefintions@cftc.gov

Re: Further Definition of "Swap Dealer" – Loan Origination Exclusion

Dear Mr. Stawick:

On September 22, 2011, representatives from three regional banks – Fifth Third Bank, M&T Bank, and Regions Financial Corporation – met with Chairman Gensler to discuss the definition of "swap dealer" contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). In particular, the regional banks expressed their views concerning the following exclusion ("Loan Origination Exclusion") from the definition of swap dealer: "[I]n no event shall an insured depository institution be considered to be a swap dealer to the extent it offers to enter into a swap with a customer in connection with originating a loan with that customer."

At the end of the meeting, Chairman Gensler invited the participants to submit supplemental written comments to clarify the points expressed at the meeting. The undersigned banks hereby submit these comments in order to clarify and emphasize the following points: (1) the importance of the Loan Origination Exclusion to regional banks and their customers and (2) the need for a flexible interpretation of the Loan Origination Exclusion so that it will apply to the types of swap transactions typically entered into between a regional bank and its customer in connection with a loan from the bank to the customer.

I. Importance of Loan Origination Exclusion

A number of regional banks currently engage in interest rate swap transactions in connection with loans made to their commercial customers. Congress recognized the importance of such transactions by enacting the Loan Origination Exclusion. The Loan Origination Exclusion permits banks to engage in swap transactions with their customers in connection with loans originated with those customers without requiring the banks to register as swap dealers.

The scale and scope of derivatives activities for regional banks are unlike those of the major money center banks. The major money center banks operate large derivatives trading desks and function as principal counterparties/primary dealers that provide critical liquidity to the market through proprietary trading and market making, from which activities they earn

substantial profits. A handful of large banks accounts for substantially all of the notional trading volume of derivatives in the U.S.[1] Because one of the primary purposes of the Dodd-Frank Act is to reduce systemic risk, it is appropriate to regulate major money center banks as swap dealers, as a failure by one of them would have systemic consequences. However, not all banks are the same, and a "one size fits all" regulatory regime would have a regressive and adverse effect on regional banks and, by extension, their customers, that was not intended by Congress.

The vast majority of the derivatives transactions of regional banks are ancillary to their primary business of providing credit to their customers. The customers require customized hedging of the cash flows and rate exposure associated with their business operations and the financing provided from their credit facilities and debt structures. Thus, for most regional banks, their swap activities are simply an extension of the credit relationship that they have with their customers. As such, the derivatives activity of regional banks is not fundamental to nor essential for the structure, function and risk characteristics of the interest rate derivatives market. Unlike money center banks, the derivatives activities of regional banks do not pose systemic risk concerns. We believe that Congress, by enacting the Loan Origination Exclusion, recognized these fundamental differences between large money center banks and smaller regional banks and provided that the latter group would not be required to register as swap dealers.

In addition, because of the more limited role that derivatives have at regional banks, requiring them to register as swap dealers would cause practical problems. Swap transactions are not a major source of revenue for most regional banks. Accordingly, for many banks, it is not economically viable for them to incur the costs associated with registering as a swap dealer (e.g., back office systems, chief compliance officer requirement, and compliance with business conduct rules that differ from their current practices).

It is thus important that the Loan Origination Exclusion be interpreted flexibly to enable regional banks to continue to engage in swap transactions with their loan customers without being required to register as a swap dealer. Otherwise, many regional banks will stop engaging in swap transactions, and their customers will suffer because they will be unable to enter into desired hedging transactions with their primary banks. It would be difficult for a customer that has a long-standing relationship with a particular bank, and has pledged its assets as collateral to support a loan from that bank, to manage its interest rate exposure by entering into hedging transactions with a different bank.

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[1] According to OCC's Quarterly Report on Bank Trading and Derivatives Activities for the second quarter of 2011, five large commercial banks represented 96% of the total banking industry derivatives notional amounts and 86% of industry net current credit exposure to derivatives.

II. Need for Flexible Interpretation of the Loan Origination Exclusion

A. Interpreting the "In Connection With Originating a Loan" Requirement

There is no requirement in the statutory language of the Loan Origination Exclusion that the swap must be entered into contemporaneously with the origination of the loan, and we believe that no such requirement should be imposed. There are numerous bona fide business reasons why a customer would want to execute a swap before or after the date when the loan is originated, as illustrated by the following examples:

- A customer may want to execute a swap before its loan is funded in order to lock in an attractive fixed interest rate or capture an acceptable rate in a volatile market.

- If the terms of the loan are amended at a later date, the customer may want or need to amend the terms of its swap (or enter into a new swap) to reflect the new loan terms and avoid an "over-hedged" position.

- A loan may be drawn down at different times during the term of the loan. For example, with a construction loan, a customer may need to borrow funds at different stages of the project (e.g., to finance the purchase of the land, to finance the construction of one or more buildings, etc.). In that situation, the customer would likely prefer to enter into one or more swaps at the times when the funds are drawn down, rather than at the origination of the loan.

- A customer's perceived need for a hedge can vary over time. For example, if a customer's business conditions, or its expectations regarding future interest rate levels, change one year after the loan was originated, the customer may well decide to increase or decrease its exposure to floating or fixed interest rate liabilities by entering into an interest rate swap at that time as a prudent financial risk mitigant.

We believe that the types of transactions described above, when entered into between a bank and a customer with whom the bank has originated a loan, should all be eligible for the Loan Origination Exclusion.[2] If such transactions are determined not to be within the scope of the Loan Origination Exclusion, then some banks will be unwilling to engage in them. For the reasons discussed above, that would make it more difficult and more expensive for bank customers to hedge their interest rate exposure.

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[2] Although the above examples involve interest rate hedges, we believe that a currency hedge relating to the terms of a loan between the borrower and the bank making the loan also should be eligible for the Loan Origination Exclusion.

B. Interpreting the Meaning of "Loan"

There are many types of transactions in which a bank extends credit to its customer that do not take the form of a conventional loan, as illustrated by the following examples:

- A commercial lease transaction.
- When the bank buys variable-rate bonds that were issued by, or for the benefit of, its customer.
- When a bank issues a letter of credit to support a variable-rate bond issuance by, or for the benefit of, its customer.
- When the bank acts as the underwriter or marketing agent to support the issuance of variable-rate bonds by, or for the benefit of, its customer.

In our view, the term "loan" in the Loan Origination Exclusion should be interpreted flexibly so as to include any type of transaction in which a bank extends credit to its customer.

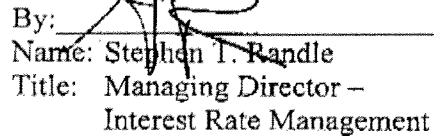
In addition, there are also various types of transactions where a customer that has an ongoing credit relationship with its primary lending bank wants to enter into a derivatives transaction in order to adjust the risk profile of its liabilities. An example of such a transaction would be a fair value swap, where the customer wishes to hedge the value of its bonds and adjust the balance between its fixed and floating rate liabilities. The customer may decide to issue fixed rate notes or bonds because of attractive terms in that market, yet as a result the customer's "mix" of fixed and floating rate liabilities may become weighted too heavily toward fixed rate liabilities. One way for the customer to correct that imbalance would be for it to execute a fixed to floating rate swap with its lending bank. Such a swap typically would be subject to the terms of the customer's credit agreement with its bank.

When there is a current and ongoing credit relationship between the bank and its customer, we believe that the types of transactions noted above should be within the scope of the Loan Origination Exclusion to avoid the unintended consequences of a regressive "one size fits all" regulatory scheme on regional banks and their borrowing customers. In our view, such a flexible interpretation of the Loan Origination Exclusion would maximize the ability of a bank customer to continue to enter into interest rate management transactions with its primary lending bank – a result that we believe to be consistent with Congressional intent.

The undersigned banks appreciate this opportunity to comment on the further definition of "Swap Dealer." If you have any questions regarding these comments, please contact Carl A. Royal, Schiff Hardin LLP, at (312) 258-5707.

Respectfully submitted,

FIFTH THIRD BANK



By:______________________________
Name: Stephen T. Randle
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REGIONS FINANCIAL CORPORATION

By:______________________________
Name: Christopher S. Grubbs
Title: Executive Managing Director

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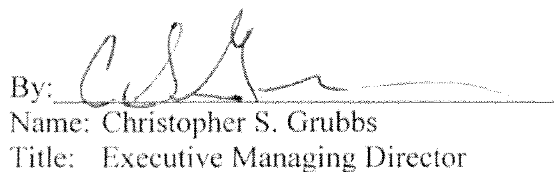

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