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Mr David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581
USA

Dear Mr Stawick,

Exemptive Order Regarding Compliance with Certain Swap Regulations (RIN 3038-AD85)

Thank you for the opportunity to comment on the proposed Exemptive Order (“the proposed order”).

We are also preparing detailed comments on the proposed interpretive guidance and policy statement regarding the cross-border application of the swaps provisions of the Commodity Exchange Act (“the guidance”). The guidance goes some way to ameliorating the far reaching scope of Title VII, but in our view does not go far enough, for example:

- Uncertainties still exist, not in the least because of inconsistencies within the guidance itself. Further uncertainty arises from the fact that the SEC's position is not known at this stage.
- Importantly, the concept of substituted compliance is still very vague and there is no guidance on the considerations the Commission would take into account in making a determination.
- It is now clear that the swap dealer registration date will be 12 October 2012, but there needs to be clarity on the date of effect of the final cross border guidance.

It is against this background that we offer the following comments on the proposed order.

Timing

In order for compliance requirements to be clear and unambiguous for all participants, it is essential that the proposed order be finalised prior to the date swap dealer registration is required. If the guidance is not finalised prior to registration, then participants will be forced into registering with no clear understanding of what obligations they will have on registration.

It is also unclear how the exemption for substituted compliance under the proposed order can operate in the absence of formal arrangements between regulators. Whilst the G20 nations are united in their desire to create a “broadly equivalent” regulatory system in each jurisdiction (including Australia via the Council of Financial Regulators), it is unclear how a participant in Australia can propose substitute compliance in the absence of a formal agreement. The ABA proposes that Commission make provision for a delay for foreign SDs and MSPs to enable any necessary changes to their domestic regimes to take effect.

Non-US SDs and MSPs should be permitted delayed compliance with respect to Entity-Level Requirements with all counterparties for two years rather than the 12 months currently proposed. The same delayed compliance period should apply for any applicable Transaction-Level Requirements with non-US counterparties who are guaranteed by US persons (other than external business conduct standards which should not apply at all). This time period would allow time for foreign jurisdictions to introduce comparable regulatory regimes and for the Commission to conduct comparability determinations with respect to those regimes.

Entity compliance plans should be able to be submitted at any time during the two year compliance period, once the local regulators have developed the appropriate regulations that would permit substituted compliance. It is not appropriate that entities be required to submit compliance plans and elect as to whether they will apply for a comparability determination prior to local regulations being finalised.

Interaction of laws

Substituted compliance has not been defined but would appear to require access to transaction data and other information under arrangements with jurisdictions that may not exist.

More generally, clarity is required as to whether the guidance overrides local rules or legislation to the extent of any inconsistency, and on whether there will be no action letters issued in such cases.

There are practical issues raised by the registration process from a cross-border context such as data protection/privacy and local requirements that may overlap or repeat US requirements.

For example, many ex-US jurisdictions, including Australia, are currently in the process of defining their internal regulations regarding the regulation of OTC derivatives. While this is generally well advanced, there will inevitably be delays in creating the rules required. A key challenge for industry overall will be the extremely tight timelines between the release of proposed guidance and the requirement for compliance.

Reporting

The proposed order contemplates compliance relief being given to non-US SDs and MSPs in relation to the SDR reporting and Large Trader Reporting requirements when dealing with non-US counterparties. This is subject to the condition that the non-US SDs and MSPs are not affiliates or subsidiaries of a US SD.

This means that an Australian SD that happens to have a US-based SD affiliate is not given this relief. From the discussion preceding the proposed order, it is clear that the Commission's intention was that only foreign entities that were part of a "US based affiliated group" would be denied this relief (column two, 77 FR 41112). The final Exemptive Order should be amended to be consistent with this intention, and reporting should be delayed until issuance of the final Order and the final cross border guidance.

Continuing uncertainty over cross-border impacts

While the proposed order and the guidance would provide advice and direction for offshore affiliates and subsidiaries of US entities, offshore entities with US operations and affiliates, or simply those dealing with US entities, are still uncertain of their position.

There is also significant uncertainty in relation to the interplay between global registration of a swap dealer and the Lincoln push out provision and Volcker rule. For example, by registering as a swap dealer, a non-US entity is immediately subject to the Lincoln push out provision and has no access to the carve outs currently available to US entities. While there have been indications that such carve outs will be made available, we do not yet have sufficient clarity to be able to make any assessment of the

impacts. In view of the uncertainties noted here and above, we believe the best course of action is to delay the registration requirements until the guidance is finalised and absorbed by the market.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Tony Burke', written over a horizontal line.

Tony Burke