



STATE STREET.

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Via: <http://comments.cftc.gov>

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

**Re: Proposed Exemptive Order Regarding Compliance With Certain Swap Regulations
(RIN 3038-AD85)**

Dear Mr. Stawick:

State Street Corporation (“State Street”) is pleased to have the opportunity to comment on the proposed “Exemptive Order Regarding Compliance with Certain Swap Regulations” (the “Proposed Exemptive Order”), issued by the Commodity Futures Trading Commission (the “Commission”) and published in the Federal Register on July 12, 2012.

State Street’s primary banking subsidiary (State Street Bank and Trust Company) is a major global dealer in foreign exchange, and expects to register as a swap dealer under the Commission’s new swap dealer regulations.

As a global provider of foreign exchange services which will likely be covered, to various extents, by the Commission’s new swaps regulatory regime, we have considerable interest in the treatment of U.S. firms’ activities with non-U.S. persons, including the Proposed Exemptive Order.

While we appreciate the relief provided in the Proposed Exemptive Order, particularly as it relates to treatment of foreign branches of U.S. swap dealers, we are concerned the relief is too narrow given the abbreviated implementation schedule for the dealer registration requirements and the ongoing uncertainty regarding certain key definitional elements of the regulations.

We are particularly concerned by the timing challenges presented by the interaction between the Commission’s Proposed Exemptive Order and its proposed interpretive guidance on “Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act.”¹ (the “Extraterritorial Guidance”). The Proposed Extraterritorial Guidance includes a highly complex new system for applying

¹ Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, 77 Fed. Reg. 41,214 (proposed July 12, 2012).

the U.S. swaps regulatory regime to activities outside the U.S. and with non-U.S. persons. Several aspects of the proposal, including a new definition of “U.S. person,” new registration and aggregation requirements and a new standard for establishing acceptable “substituted compliance” in non-U.S. jurisdictions, are likely to generate considerable public comment. However, this proposal will likely not be finalized before the swap dealer registration deadline, the effective date of many Commission regulations (including the external business conduct rules), or the issuance of a final Exemptive Order. In addition, once finalized, it is likely that the Extraterritorial Guidance will require significant changes to current industry practice, requiring significant transition periods.

The Proposed Exemptive Order, however, relies on numerous aspects of the Proposed Extraterritorial Guidance, particularly the definition of “U.S. person,” without the benefit of public comment and further Commission deliberation. As a result, it is unlikely firms will be able to avail themselves of the relief provided, creating considerable uncertainty in global financial markets and placing undue burden on firms to impose still-emerging U.S. regulations.

State Street urges the Commission to modify the Proposed Exemptive Order to refer to a more workable interim definition of “U.S. person.” The interim definition should be clear, concise, and based on information currently available to market participants. For example, the Commission could, in the interim, define “U.S. person” as:

- Any natural person who is a resident of the U.S.; or
- Any corporation, partnership, LLC, business or other trust, association, joint-stock company, fund, or any form of enterprise similar to any of the foregoing that is organized or incorporated under the laws of the United States or has its principal place of business in the United States.²

Market participants should be permitted to rely on this interim definition for both registration and regulatory requirements until a reasonable transition period after the Commission finalizes its Extraterritorial Guidance.

In addition, given the uncertainty of the final regulatory outcome, and the very short implementation timeframe, we believe the scope of the relief provided in the Proposed Exemptive Order is too narrow, particularly as it relates to activity of U.S.-based swap dealers with non-U.S. counterparties.

We strongly support the relief from Transaction-Level requirements provided under the Proposed Exemptive Order for foreign branches of U.S. swap dealers transacting with non-U.S. persons. Most of our swap dealing activity with non-U.S. persons takes place through such branches. In certain cases, however, risk management practices and other practical considerations have historically resulted in our conducting transactions with non-U.S. persons through our U.S.-based swap dealer’s home office. For example, we engage in foreign exchange trading in several restricted markets where we do not operate a branch, and where time zone considerations have resulted in our entering into transactions out of our U.S.-based swap dealer. While we could, over time, move this activity to a foreign branch, it seems unreasonable to require such restructuring until the Commission’s guidance in this area is final. These transactions, though, are identical in substance to those which could be conducted through a foreign branch.

As a result, we urge the Commission to equalize treatment of non-U.S. counterparties by extending the Proposed Exemptive Order’s relief from Transaction-Level requirements to U.S. based swap dealers transacting with non-U.S. counterparties.

² For the purposes of this definition, non-U.S. branches of U.S. swap dealers would not be considered U.S. persons.

By adopting our recommendations above --- providing a simple interim definition of “U.S. person” and extending transaction requirement relief to U.S. swap dealer activity with non-U.S. persons under that definition --- the Commission can modify its Proposed Exemptive Order to provide reasonable transition treatment of newly registered swap dealers, while accomplishing the systemic risk reduction and other goals of the Commission and the Dodd-Frank Act.

Once again, State Street appreciates having the opportunity to comment on this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Stefan M. Gavell". The signature is fluid and cursive, with the first name being the most prominent.

Stefan M. Gavell