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August 13, 2012

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

Re: Exemptive Order Regarding Compliance with Certain Swap Regulations, RIN 3083-AD85 (the "Exemptive Order").[1]

Secretary Stawick:

Citigroup Inc. appreciates the opportunity to provide comments to the Commodity Futures Trading Commission on its proposed Exemptive Order to provide transitional relief from compliance with certain provisions under Title VII of Dodd-Frank. We appreciate the Commission's efforts to address these issues by proposing the relief contained in the proposed Exemptive Order. We expect to submit a separate comment letter on the Commission's proposed Cross-Border Guidance[2] in the next several weeks.

Since the beginning of the Commission's Title VII rulemaking process, Citi has dedicated significant resources toward implementing the extensive technological and systems enhancements necessary to comply with the anticipated final requirements. In this regard, pending cross-border guidance from the Commission, Citi focused on preparing to comply with the core elements of the Title VII regime for swap activities within the U.S. and from abroad when facing U.S. clients, including mandatory clearing, mandatory trading, regulatory and public reporting, and external business conduct requirements.

The proposed Cross-Border Guidance's application to non-U.S. swap activities, however, was unexpectedly broad. Because market participants' resources and focus have been prioritized on conforming swap activities with U.S. clients, there are specific areas with respect to overseas swaps with non-U.S. clients where we believe it would be appropriate for the Commission to grant additional time to conform. Moreover, non-U.S. clients are expressing significant concern about transacting with any U.S. or U.S.-affiliated counterparty due to fears and confusion related

[1] 77 Fed. Reg. 41110 (July 12, 2012).

[2] *Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act*, RIN 3038-AD57, 77 Fed. Reg. 41214 (July 12, 2012).

to the Dodd-Frank Act generally and the Cross-Border Guidance specifically – for which the Exemptive Order can be crafted to alleviate in the near term.

Furthermore, the proposed Cross-Border Guidance raises complicated questions around competitive equality, the treatment of guarantees from U.S. affiliates and the application of Title VII requirements to "conduit" affiliates of U.S. persons. As the Commission carefully considers how to approach each of these issues in the final Guidance, the Exemptive Order should preserve a competitive balance among swap dealers and swap market participants.

Accordingly, we believe the Exemptive Order should be designed to:

- Not place U.S.-based firms at a competitive disadvantage as compared to non-U.S.-based firms, particularly while the Commission considers the complex issues raised in the proposed Cross-Border Guidance; and

- Facilitate the implementation of Title VII requirements in an orderly manner by prioritizing implementation resources on conforming U.S. swap activities to Title VII while providing a reasonable amount of additional time to address technical issues, particularly in the context of swaps conducted outside the U.S. with non-U.S. persons.

In addition, registration of non-U.S. entities solely as a result of guarantees or inter-affiliate transactions may not be appropriate in all circumstances, and this issue requires more discussion with and analysis by the Commission. Any requirements in this regard should not be effective until a reasonable amount of time following finalization of the Cross-Border Guidance.

We suggest targeted modifications to the proposed Exemptive Order to achieve these objectives – including that requirements on activity with non-U.S. clients from overseas locations would commence a reasonable amount of time (i.e., 90 days) following finalization of the Cross-Border Guidance; alternatively, Appendix A to this letter sets out certain targeted modifications as to the timing of certain requirements. To the extent the Commission makes modifications to the Exemptive Order in addition to those suggested herein, we urge the Commission to grant relief only in a manner that will not give non-U.S.-based firms a competitive advantage in their ability to transact with U.S. or non-U.S. clients.

1. Non-U.S. Branches of U.S. Swap Dealers Should Be Treated As "Non-U.S. Persons"

The proposed Exemptive Order and proposed Cross-Border Guidance would define an overseas branch of a U.S. swap dealer to be a "U.S. person." This is a critical issue. Such branches have not historically been treated as U.S. persons under existing law. Moreover, because of the definition and its follow-on effects, non-U.S. clients have expressed reluctance to trade with any U.S. person due to concerns arising from the potential application of Title VII to them. If non-U.S. swap clients must treat a non-U.S. branch of a U.S. swap dealer as a U.S. person for any purpose, including for their major swap participant calculations or for Title VII

transaction-level requirements, they will have an overwhelming incentive to move their trading activity to foreign swap dealers.

In addition, there would be major challenges if overseas branches of two U.S. swap dealers transacting with each other in a local market were not included in the Exemptive Order. Because under the proposed Guidance overseas branches of U.S. swap dealers remain subject to U.S. transaction-level requirements when trading with other overseas branches of U.S. swap dealers, they will have difficulties hedging risks in local markets.[3]

Non-U.S. swap dealers, too, would face reduced liquidity when transacting in their own local markets because of the reduced ability of U.S. swap dealers to make markets abroad via their overseas branches, which are often key participants in such markets.

In the longer term, substituted compliance with comparable foreign regulations would be an appropriate way to balance these concerns with the Commission's systemic risk and anti-evasion objectives. Pending further deliberation by the Commission and input from market participants as to the proper approach in these situations, temporary relief during the term of the Exemptive Order is appropriate in order to prevent these adverse consequences to the overseas branches of U.S. swap dealers and non-U.S. swap markets. Accordingly, we suggest the Commission grant the following interim relief:

- ***During the term of the Exemptive Order, the non-U.S. branches of a U.S. swap dealer would not be defined as a "U.S. person." Even with this accommodation, such branches would still be subject to Title VII transaction-level rules for swaps with U.S. persons, and would still be subject to the same Title VII entity-level rules that apply to the overall U.S. swap dealer.[4]***

2. Competitive Parity for Swap Dealers Trading with Non-U.S. Clients from within the U.S.

Under the proposed Exemptive Order and the proposed Cross-Border Guidance, the U.S. branch of a foreign swap dealer would still be defined as a non-U.S. person. As a result, the U.S. branch of a foreign swap dealer would not be subject to Title VII transaction-level requirements for swaps with non-U.S. persons, including other U.S. branches of foreign swap dealers. This is a clear competitive advantage for foreign swap dealers. These transactions are solicited and conducted by U.S.-based traders operating from a U.S. office of the foreign swap dealer. In contrast, U.S. swap dealers operating under the same circumstances would be required to comply

[3] For instance, if an overseas branch made a loan to a U.S. company operating abroad that caused the overseas branch to incur a local currency or interest rate risk, the overseas branch would either need to limit its trading partners for its hedge in such market to non-U.S. swap dealers or, if it hedged itself through a swap with an overseas branch of another U.S. swap dealer, would need to comply with U.S. transaction-level requirements. This negates the Commission's intention to allow overseas branches to operate under local transaction rules subject to a substituted compliance finding.

[4] We further discuss related suggestions regarding an interim definition of a U.S. person in Appendix A.

with Title VII transaction-level rules for all swaps entered into with all counterparties, U.S. and non-U.S. persons alike.

This result puts U.S.-based swap dealers at a significant competitive disadvantage. Accordingly, we suggest that:

- ***The Commission modify the Exemptive Order to assure competitive parity between U.S. and non-U.S. swap dealers when transacting with non-U.S. clients from within the U.S.***

3. Phased Implementation of Technical Requirements

Individual firms and industry working groups have identified several operational, technological and documentation issues for which additional time is needed to assure orderly implementation. This is particularly the case for operations outside the U.S., since many non-U.S. markets are not as technologically sophisticated as the U.S., firms and clients use different systems and have different documentation conventions outside the U.S., and firms have focused on implementation within the U.S. pending publication of the cross-border guidance by the Commission. As stated above, one approach could be to provide a reasonable amount of time (i.e., 90 days) following finalization of the Cross-Border Guidance to apply requirements to activity with non-U.S. clients from overseas locations. Alternatively, we have attached as Appendix A to this letter a set of targeted modifications to the Exemptive Order designed to address these technical issues in ways that are consistent with the Commission's overall objectives of mitigating systemic risk and increasing transparency.

4. Term of the Exemptive Order

The proposed Exemptive Order would expire 12 months after it was published. We respectfully submit that this term would not provide enough time for firms to take the final Order into account in their implementation plans, nor to implement the final Cross-Border Guidance and associated Commission determinations on whether non-U.S. regulatory regimes are sufficiently comparable to serve as bases for substituted compliance. In this regard, we understand a corollary purpose of the Exemptive Order is to delay application of the final Cross-Border Guidance until other major jurisdictions have implemented, or finalized their plans for the implementation of, comparable derivatives reforms. Accordingly, the term of the Exemptive Order should be related to implementation of those reforms, and should commence on the date swap dealer registration is required for an initial term of 12 months (or alternatively 12 months from finalization of the Cross Border Guidance). We wholly agree that the Commission should revisit the term of the Exemptive Order in light of whether and when other major jurisdictions (including but not limited to Europe, Singapore, Hong Kong, Japan and Australia) plan to implement comparable reforms.

* * *

We would be happy to discuss any of these issues in greater depth should you wish to do so.

Very truly yours,

/s/ James A. Forese
James A. Forese
Chief Executive Officer, Securities & Banking

cc:

Chairman Gary Gensler
Commissioner Jill E. Sommers
Commissioner Bart Chilton
Commissioner Scott D. O'Malia
Commissioner Mark Wetjen
Gary Barnett, Director of the Division of Swap Dealer and Intermediary Oversight
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Chairperson Mary L. Schapiro
Robert W. Cook, Director of the Division of Trading and Markets
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Mary John Miller, Under Secretary for Domestic Finance
Cyrus Amir-Mokri, Assistant Secretary for Financial Institutions
Timothy J. Bowler, Deputy Assistant Secretary, Office of Capital Markets
United States Department of the Treasury

Board of Governors of the Federal Reserve System

Federal Deposit Insurance Corporation

Office of the Comptroller of the Currency

APPENDIX A

Phased Implementation of Technical Requirements

1. Interim Definition of U.S. Person

There are technical and operational challenges associated with implementing a new definition of "U.S. person", particularly with respect to funds and other collective investment vehicles, as firms do not have the requisite information or technological capability to identify or monitor the beneficial owners of such entities. Therefore, in addition to our proposal in Part 1 of this letter, we would not object to industry recommendations (i.e., the approaches suggested in the SIFMA and The Clearing House comment letters to the Exemptive Order, dated August 13, 2012) to address this issue through an interim definition applicable on a transitional basis. This approach would be consistent with the intended purpose of the Exemptive Order as it would aid an orderly transition to the Title VII regime; but any interim definition framework should ensure that a level competitive playing field is maintained among and between U.S. and non-U.S. firms while the Commission further considers this issue.

2. Year-End Systems Freezes and Similar Processes

Across the industry, firms are occupied with closing out year-end books and records during the months of December and January. For this reason, effecting changes to risk management and reporting systems would be very impractical during this particularly hectic time of year. Most swap dealers will need at least until January 31, 2013 to avoid complications arising from year-end systems change freezes, which begin in December. The proposed Exemptive Order currently delays compliance for U.S. swap dealers on entity-level requirements (except swap data recordkeeping, swap data repository ("SDR") reporting and large trader reporting) until January 1, 2013. As a short addition of time beyond the proposed deadline is reasonable and justified, we suggest:

- ***The compliance deadline for U.S. and non-U.S. swap dealers for entity-level requirements (except swap data recordkeeping, SDR reporting and large trader reporting) should be delayed until the later of February 1, 2013 or 90 days after the date swap dealer registration is required.***[5]

3. Adequate Time to Implement Systems Changes for Reporting by Non-U.S. Operations

U.S. and non-U.S. swap dealers often have different systems for non-U.S. operations than their U.S. operations. As industry efforts have prioritized meeting the swap data recordkeeping, SDR reporting and large trader reporting requirements for swaps with U.S. clients, a reasonable amount of additional time is required to implement the systems and operational changes for reporting swaps by overseas branches and non-U.S. swap dealer affiliates of U.S. swap dealers

[5] We note that there also are industry-wide suggestions for an alternative compliance schedule with respect to recordkeeping requirements for U.S. and non-U.S. swap dealers.

with non-U.S. clients, particularly with respect to swap activity in less technologically advanced markets and across multiple time zones.

Accordingly, subject to the interim Exemptive Order standards for swap data recordkeeping and SDR reporting suggested below, we recommend that:

- ***Compliance with swap data recordkeeping and SDR reporting for swaps with non-U.S. persons by (i) overseas branches of a U.S. swap dealer, and (ii) non-U.S. swap dealer affiliates of a U.S. swap dealer, would commence 90 days after SDR reporting requirements are effective.***

4. Conflicts of Law Relating to Local Law Client Confidentiality Requirements

Additional time is also needed for the Commission and market participants to address concerns arising from client confidentiality requirements under the local law of certain non-U.S. jurisdictions. This is a complicated issue that requires consultation with local regulators. At least two dozen jurisdictions have been identified where local law prohibits the disclosure of client names to non-local regulators that do not currently have an information sharing treaty or agreement in place with the local regulator. One solution could be to mask client identities, consistent with the approach taken in the OTC Derivatives Supervisors Group global trade repository. As this delicate issue requires more time for the Commission to consider and to develop possible alternative solutions, we suggest:

- ***During the term of the Exemptive Order, the overseas branch or non-U.S. swap dealer affiliate of a U.S. swap dealer should be permitted to mask client information from SDR reporting, provided that the failure to do so would violate non-U.S. legal requirements.***

5. Conforming the Timing for Data Reporting Outside the U.S.

We understand that the Commission designed the timeframes for reporting the primary economic terms ("PET") data for a swap under Part 45 regulatory reporting rules to synchronize them with reporting transaction and pricing data for swaps under Part 43 real-time public reporting rules, so that a single data stream might be used to report transactional information following execution. However, this consideration does not apply to swaps by overseas branches and non-U.S. swap dealer affiliates of U.S. swap dealers with non-U.S. clients, as Part 43 would not apply to those swaps during the term of the Exemptive Order. Thereafter, non-U.S. swap dealer affiliates would also not be subject to Part 43 for those swaps, and overseas branches of U.S. swap dealers would be eligible for substituted compliance.

It is important to highlight that the data systems capabilities and market practices in many foreign jurisdictions with nascent derivatives markets operate at a significantly slower pace than in developed markets. The implementation of essentially real-time reporting requirements pursuant to Part 45 will consequently constitute a massive operational undertaking in these markets. More time is therefore needed for overseas branches and non-U.S. swap dealer

affiliates of U.S. swap dealers to develop and implement the infrastructure necessary to comply with timeframes for PET data reporting for transactions with non-U.S. persons.

Accordingly, during the term of the Exemptive Order, rather than mandating that these non-U.S. swap transactions be reported to an SDR under the timelines required by Part 45, a more feasible and effective approach would be for the Commission to access similar data from the existing Global Trade Repository ("GTR") created by the OTC Derivatives Supervisors Group (of which the Commission is a member) to monitor systemic risk. Even though such non-U.S. trade data is typically reported to the GTR on a T+1 basis to accommodate the realities of foreign markets and clientele, access to such data will still effectively address the Commission's systemic risk and evasion concerns while providing the industry time to develop the necessary local operational and technology infrastructure within each of these jurisdictions. (We note that via the GTR, client confidentiality issues have been resolved to the satisfaction of various non-U.S. regulators.)

The following targeted modification would address the foregoing issues without materially interfering with the Commission's ability to monitor for systemic risk:

- ***During the term of the Exemptive Order, an overseas branch or non-U.S. swap dealer affiliate of a U.S. swap dealer should be permitted to report data for a swap with a non-U.S. person to the GTR on a T+1 basis.***

6. Conforming the Categorization of Certain Other Entity-Level and Transaction-Level Requirements

The implementation of swap data recordkeeping and internal conflicts infrastructure poses unique challenges. Despite devoting considerable resources in this area, more time is required to bring non-U.S. operations into compliance with certain rules. This is particularly the case for those recordkeeping and internal conflicts requirements that apply to particular swaps or particular trading or clearing relationships – such requirements are generally transactional in nature, client protection oriented, and/or depend in part on local trading practices, and complying with them with respect to non-U.S. counterparties would require modifications to systems. To address these issues, we suggest that:

- ***During the term of the Exemptive Order, swap data recordkeeping and internal conflicts requirements that are transactional in nature, foreign client protection oriented, and/or depend on local trading practices, should be treated as transaction-level rules instead of entity-level rules for overseas branches of U.S. swap dealers, thus including such requirements in the Exemptive Order and subjecting them to substituted compliance review for overseas transactions with non-U.S. clients.***[6]

[6] These requirements are: Section 23.605 (conflicts of interest related to clearing) of Commission regulations; Section 23.201(b)(4) (marketing and sales materials); Section 23.201(b)(3) (complaints); and Sections 23.201(a)(1), (a)(2), and (a)(3) (transaction and position records).

7. Reporting Backlogs

SDR reporting for historical swaps (i.e., swaps entered into before reporting obligations for newly executed swaps take effect) under Part 46 currently must begin on the same day as SDR reporting for newly executed swaps under Part 45. As a result, on the registration date, swap dealers will be required to report certain expired or terminated swaps as well as all existing credit and rate swaps, and all newly executed credit and rate swaps. Reporting for other types of swaps would follow 90 days later.

For both swap dealers and SDRs alike, the simultaneous implementation of reporting requirements for historical and new swaps will divert attention from making the preparations necessary to comply with SDR reporting for new swaps, and thus increases the likelihood of error. In particular, data for many historical swaps is not available in the format necessary for reporting. And many of the swaps subject to reporting requirements under Part 46 have expired or were terminated. Further, additional time for SDR reporting of historical swaps would not materially hinder the Commission's ability to assess systemic risk. Accordingly, we suggest that:

- ***Part 46 historical swap reporting for a particular swap should be delayed until 90 days after the reporting deadline for new swaps in the same asset class. (For the avoidance of doubt, this same 90 day timetable would apply to reporting of swaps between non-U.S. operations and non-U.S. clients, subject to the above suggested changes.)***

8. Compliance Plan

We would like the Commission to confirm that the compliance plan required to be submitted 60 days after registration in connection with interim relief under the Exemptive Order is merely intended to identify a registrant's intended plan to apply for substituted compliance, and is not meant to contain an analysis of the substantive requirements in non-U.S. jurisdictions. Further information regarding the substantive requirements in non-U.S. jurisdictions should be required only as part of a comparability application to the Commission under the Cross-Border Guidance, which should not be due until 90 days after finalization of the Cross-Border Guidance.