



August 13, 2012

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

Deutsche Bank AG New York
Legal Department
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Tel 212-250-2500

Re: Comment Letter on the Proposed Exemptive Order Regarding Compliance with Certain Swap Regulations (RIN 3038-AD85)

Dear Mr. Stawick:

Deutsche Bank AG (“**DB AG**” and, together with its affiliates, “**Deutsche Bank**”) appreciates the opportunity to provide the Commodity Futures Trading Commission (the “**Commission**”) with our views and suggestions regarding the Commission’s Proposed Exemptive Order Regarding Compliance with Certain Swap Provisions (the “**Proposed Exemptive Order**”).¹ We are concerned that several provisions of the Proposed Exemptive Order are unclear and that others could pose significant costs and challenges without corresponding benefit if finalized as proposed. Consequently, we write to share our concerns as well as to suggest clarifications or modifications that would improve the Proposed Exemptive Order and lead to successful implementation of Title VII requirements more generally.

Registration Requirements

The Commission’s Proposed Interpretive Guidance for Cross-Border Application of Certain Swaps Provisions (the “**Proposed Interpretive Guidance**”)² expands the scope of non-U.S. entities required to register as swap dealers (“**SDs**”) and major swap participants (“**MSPs**”) beyond what market participants had expected. As a result, market participants will require additional time to prepare for registration as SDs and MSPs and to implement the infrastructure necessary to comply with regulatory requirements applicable to registrants. For example, the Proposed Interpretive Guidance would increase the set of non-U.S. entities required to register as SDs through an expansive and unclear definition of U.S. person. DB AG will register as a swap dealer regardless of the final definition of a U.S. person, but DB AG has certain non-U.S. affiliates that engage in swap transactions almost exclusively with persons located in non-U.S. jurisdictions who would appear to be non-U.S. persons without further inquiry and analysis. As a result, until final interpretive guidance (the “**Final Interpretive Guidance**”), a final exemptive order (the “**Final Exemptive Order**”) and a final definition of U.S. person (the “**Final Definition**”) are adopted such that DB AG’s non-U.S. affiliates can properly analyze the status of their swap counterparties, the registration obligations of these non-U.S. DB AG affiliates cannot be known for certain or acted upon.

¹ Exemptive Order Regarding Compliance with Certain Swap Regulations, 77 Fed. Reg. 41,110 (proposed July 12, 2012).

² Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, 77 Fed. Reg. 41,214 (proposed July 12, 2012).



Consequently, we request that, as part of its exemptive relief, the Commission delay the registration requirement for SDs and MSPs until at least 90 days following the publication of all of the Final Exemptive Order, the Final Interpretive Guidance and the Final Definition in the *Federal Register*. Without this relief, many registration obligations will not be able to be satisfied by the required date. Further, registration requirements are currently conditioned on information subject to change. This could lead to a situation in which clarifying information contained in the Final Definition, Final Exemptive Order or Final Interpretive Guidance—information which may be critical in determining which, if any, additional DB AG-affiliated entities must register—does not become available until immediately before, or even sometime after, the registration deadline. This would make full and timely compliance effectively impossible for entities whose registration obligations are not currently clear, threatening the transition to Title VII regulations and market stability.

Interim Approach to “U.S. Person”

As noted above, the definition of U.S. person is critically important to the impact of Title VII swap regulations. Incorporating any definition of U.S. person into the swap dealing activities of regulated entities will require significant new systems and procedures as well as significant information collection from counterparties. The task is complicated by the novel, complex and unclear definition proposed in the Proposed Interpretive Guidance.

Currently, firms such as Deutsche Bank track swap counterparties' U.S. nexus only for limited purposes and using approaches that would not make readily available the information needed to evaluate those counterparties in light of the definition of U.S. person included in the Proposed Interpretive Guidance. Therefore, we propose that, during an interim period commencing on the effective date of the Exemptive Order and continuing for a period of 90 days after the Final Definition is adopted, firms use a definition of U.S. person consistent with the approach that the firms have used to in evaluating the potential applicability of already existing U.S. regulations. Practices among firms will vary as to what information is collected regarding swap counterparties, but at a minimum this information would require regulated entities to include as a “U.S. person”:

- Any natural person who is a resident of the U.S.; and
- 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.

We believe allowing regulated entities to identify counterparties as U.S. persons in this fashion, based on information already gathered, will permit the Commission to regulate the majority of swap transactions and counterparties over which it will ultimately have jurisdiction without requiring regulated entities to create an interim tracking system that would become irrelevant once the Final Definition is published. Further, use of this approach in the interim period would have the effect of phasing in Title VII requirements, starting with the largest swap entities and counterparties—a potentially desirable result in itself. Finally, this proposed approach would only be applicable during the interim period until the Final Definition is adopted. This proposed approach to the interim period should not be viewed as a substantive comment on the definition of U.S. person included in the Proposed Interpretive Guidance, which we intend to comment on separately.



Reporting Requirements

While the Proposed Exemptive Order generally provides relief from reporting requirements (including SDR reporting and large trader reporting) for non-U.S. SDs and non-U.S. MSPs in their transactions with non-U.S. counterparties, this relief does not extend to non-U.S. SDs and non-U.S. MSPs that are affiliates of U.S. SDs.³ We believe that this restriction on relief is inappropriate and likely unintended. In the Proposed Exemptive Order, the rationale provided for not extending this relief to non-U.S. SDs and non-U.S. MSPs that are affiliates of U.S. SDs is “the Commission’s supervisory interest in data related to the swap activities of non-U.S. SDs and non-U.S. MSPs **that are part of a U.S.-based affiliated group.**”⁴ Based on this goal, we believe that the Commission meant to carve out from reporting relief non-U.S. SDs or MSPs that are controlled by a U.S.-based SD. However, the Proposed Exemptive Order uses the word “affiliates” rather than merely “subsidiaries” of a U.S. SD, which would carve out from the relief non-U.S. SDs that control (rather than are controlled by) an affiliated U.S.-based SD. In Deutsche Bank’s case, since DB AG may have a U.S. subsidiary registered as an SD, DB AG would therefore not be eligible for the relief, even though its relationship to its subsidiary in no way causes DB AG to be “part of a U.S.-based affiliated group.” Additionally, to the extent that this restriction on relief is predicated on the idea that a non-U.S. SD or MSP with a U.S. SD affiliate could simply use the reporting systems of its U.S. SD affiliate, we note that affiliates, particularly in different countries, frequently use different and unrelated technology systems.

Consequently, we request that the Commission provide in the Final Exemptive Order that non-U.S. SDs and non-U.S. MSPs are exempt from reporting requirements for all swaps with non-U.S. counterparties, except where the non-U.S. SD or MSP is a direct subsidiary of a U.S.-based SD. We believe this differentiation between kinds of U.S. affiliation adequately protects the legitimate supervisory interests of the Commission without depriving non-U.S. SDs and non-U.S. MSPs that are not part of a U.S.-based affiliated group of this important relief.

Exemptive Relief for Non-U.S. Non-SDs and Non-MSPs

The Proposed Exemptive Order provides relief to SDs and MSPs from certain Entity-Level and from certain Transaction-Level Requirements for transactions with non-U.S. counterparties. It does not, however, extend equivalent relief to swap counterparties that are neither SDs nor MSPs. However, certain provisions of Title VII, such as reporting and recordkeeping provisions, are triggered in any swap transaction involving a U.S. person, regardless of whether either counterparty is an SD or MSP. This leads to anomalous results, particularly with respect to SDR reporting. Specifically, a swap between a non-U.S. person and a non-U.S. branch of a registered SD or MSP would be eligible for exemptive relief, whereas the same non-U.S. person engaging in a transaction with the same terms facing a non-U.S. branch of a U.S. bank that is not a registered SD or MSP would be denied the same relief. It seems unlikely the Commission would have more regulatory interest in such a swap than in the same swap where the non-U.S. branch is part of a registered swap dealer. Regulation of this swap also would not satisfy the requisite jurisdictional nexus in Section 2(i) of the Commodity Exchange Act.

To avoid this result and the inherent disparities it would create, we believe that the Commission should clarify that transactions between non-SD/MSP entities are subject to at least

³ Proposed Exemptive Order at 41,112.

⁴ Proposed Exemptive Order at 41,112 (emphasis added).



the same relief as to transactions including SDs and MSPs. This result would facilitate uniform swap regulation in foreign jurisdictions and would allow the Commission to focus its compliance and enforcement efforts on entities and transactions where U.S. market stability is more immediately and significantly implicated.

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We thank the Commission for consideration of our comments. If you have any questions, please do not hesitate to call the undersigned.

Respectfully submitted,

Handwritten signature of Joseph Polizzotto in blue ink.

Joseph Polizzotto
Managing Director – General Counsel
for the Americas
Deutsche Bank AG

Handwritten signature of Eric Gallinek in blue ink.

Eric Gallinek
Managing Director – Head of
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