

August 13, 2012

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

Dear Secretary Stawick:

Re: Exemptive Order Regarding Compliance with Certain Swap Regulations, RIN 3038-AD85

The Canadian Bankers Association (the **CBA**) works on behalf of 54 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 274,000 employees. The CBA advocates for effective public policies that contribute to a sound, successful banking system that benefits Canadians and Canada's economy. The CBA appreciates the opportunity to provide comments on the proposed Exemptive Order Regarding Compliance with Certain Swap Regulations (the **Proposed Order**) that was issued on June 29, 2012 by the Commodity Futures Trading Commission (the **CFTC** or the **Commission**). We would also like to take this opportunity to provide some preliminary comments on the Proposed Interpretive Guidance and Policy Statement regarding the Cross Border Application of Certain Swap Provisions of the Commodity Exchange Act (the **Proposed Guidance**) that was issued by the CFTC on June 29, 2012 (together with the Proposed Order, the **CFTC Proposal**).

The CBA supports the efforts of the Commission, as well as its counterparts in other jurisdictions, to reduce the systemic risks associated with the OTC derivatives market and increase the transparency of that market. We do have, however, concerns about the potential negative impacts of the CFTC Proposal on non-U.S. swap dealers including those of our member banks with existing swaps operations and thus urge the Commission to reconsider certain aspects of the CFTC Proposal as currently drafted. We would also like to express our general support for, and concurrence with, the comment letter dated August 13, 2012 and submitted by the Institute of International Bankers on the Proposed Order (the **IIB Letter**).

Extraterritorial Impacts

At this time, certain of our member banks intend to register their Canadian-headquartered parent bank as swap dealers (SDs) with the National Futures Association (NFA). Like the United States, Canada committed, as part of the G20 group of nations, to reduce systemic risk and increase transparency in the OTC derivatives market. Canadian regulators are currently examining existing legislation governing the OTC derivatives market in Canada, and will be putting into place new rules and standards to achieve the objectives contemplated by the G20 nations and the relevant international standard setters.

The issue with the CFTC Proposal is that the exemption from the entity-level requirements provided through the substituted compliance regime could be inadequate and impracticable in a number of respects. In particular, we question whether it is appropriate for the Commission to impose entity-level requirements on financial institutions that are subject to a stringent and comprehensive regulatory regime in their home countries, such as Canadian banks. We are encouraged that the CFTC Proposal permits a regime of substituted compliance which is intended to exempt from most of the Commission's entity-level requirements those institutions that are subject to "comparable" requirements in their home jurisdictions. We do, however, continue to have significant concerns about how this proposed substituted compliance regime will take effect in practice, specifically with respect to how the CFTC will undertake the comparability assessment.

Challenges with the CFTC's Comparability Standard

Canada, like many other jurisdictions whose firms are major participants in the OTC derivatives market, has taken a principles-based approach to the rules and regulations governing banking and capital markets, including the OTC derivatives market. The Canadian approach is therefore in stark contrast to the rules-based approach taken by the Commission. The CFTC Proposal indicates that the comparability assessment will involve an examination of how home jurisdiction requirements compare to the CFTC Proposal's entity-level requirements, on a requirement-by-requirement basis.

We believe that the more reasonable approach would be to assess the regulatory framework to which a foreign financial institution is subject by assessing the objectives that guide the regulatory regime to which that institution is subject, rather than the granular approach that the Commission proposes to take towards the comparability assessment. The comparability assessment should focus on the objectives and intended outcomes of OTC derivatives regulation in foreign jurisdictions, rather than whether foreign regulations correspond directly and precisely to those set out by the CFTC.

The CFTC Proposal also notes that the CFTC will retain broad discretion to make the comparability determination. We believe the Commission should grant significant deference to statements of comparability from home prudential regulators in jurisdictions that have long, demonstrated histories of strong regulation and oversight such as the Office of the Superintendent for Financial Institutions, the prudential regulator for Canadian banks.

Challenges with the Registration Process

There are aspects of the registration process that are inconsistent with the Proposed Order's relief from entity-level requirements in that foreign SDs are subject to obligations that are properly characterized as falling within the regulatory jurisdiction of the foreign SD's domestic prudential regulator. We support and echo the more detailed comments in the IIB letter on this issue¹.

Challenges with Timing

We are very concerned about the fact that the CFTC Proposal currently contemplates that SDs will have to register with the NFA and provide the Commission with substituted compliance plans prior to the finalization of the Proposed Guidance. Market participants, as well as their home country regulators, need to fully understand the final guidance issued by the CFTC and its implications for their businesses. Indeed, certain elements of the Proposed Guidance, such as the definition of a 'U.S. Person', are not clear to market participants and therefore there is a lack of clarity about whether registration for certain entities will even be necessary.

Furthermore, we note that the final version of the Proposed Order should be issued prior to the registration deadline for foreign SDs. In the absence of having the opportunity to review the final

¹ Please see section B(3) of the IIB Letter.

version prior to registering, foreign firms may have to incur costs towards the registration and compliance process without knowing whether they would qualify for exemptive relief under the final version of the Proposed Order.

Finally, preparing for the registration process will require coordination with our domestic regulators which will add to the time necessary to be ready for registration. In addition, domestic regulators will want to review and approve the registration plans of firms under their jurisdiction prior to registration and will therefore likely require greater certainty as to the final rules to which those firms are subject.

For these reasons, we believe it is imperative that the Commission examine the timelines for registration and substituted compliance that are currently contemplated, and delay the key dates in order to allow all parties to fully assess the impacts of the CFTC Proposal and review final rules relating to that proposal.

Challenges with the Requirement to Provide Detailed Compliance Plans

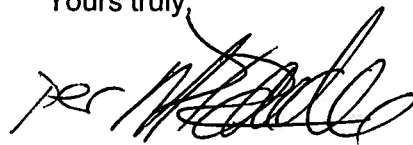
The Proposed Order provides exemptive relief for certain foreign SDs from some of the entity-level and transaction-level requirements. In order to receive this exemptive relief, firms have to submit detailed compliance plans to the NFA within 60 days of registration. The detailed compliance plans have to set out whether the firm intends to seek a comparability determination from the CFTC and thus rely on compliance with domestic requirements as well as a detailed description of such requirements.

We are concerned about this obligation, and the associated timeline, because the Proposed Guidance setting out the standards governing a comparability determination have not yet been finalized. Therefore, it will be impossible for foreign SDs to know the amount and detail of information that the Commission is seeking for the comparability assessment by the deadline imposed to provide such information.

For these reasons, we respectfully request the CFTC to permit firms to file a notice with the Commission that indicates their intent to seek a comparability determination without the additional obligation to provide a detailed description of comparable requirements under local law. This notice of intent can be supplemented by a detailed compliance plan once the Proposed Guidance has been finalized.

In closing, we thank you again for the opportunity to share our comments on the CFTC Proposal. We have taken this opportunity to provide some high-level comments that are of significant concern to our member banks that operate in the U.S. derivatives market, and would be pleased to respond directly to any questions you may have regarding the foregoing. Thank you in advance for taking our views into consideration.

Yours truly,

A handwritten signature in black ink, appearing to be "per [Name]", written over a horizontal line.