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August 27, 2012

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

RE: Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act (RIN 3038-AD57)

Dear Mr. Stawick:

Barclays Bank PLC ("Barclays")¹ appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the "Commission") with respect to the proposed interpretive guidance on the Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act (the "Proposed Guidance")². Barclays supports the Commission's work to provide clarity on the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act's Title VII ("Title VII") requirements through the issuance of the Proposed Guidance and to address industry implementation issues through the proposed Exemptive Order Regarding Compliance with Certain Swap Regulations (the "Proposed Exemptive Order")³. As an English bank authorized and regulated by the Financial Services Authority as our primary regulator, we have some concerns with certain aspects of the Proposed Guidance.

Concepts relating to cross-border application of Title VII may be relatively straightforward to convey as rules but may at the same time be extraordinarily complex and operationally challenging to implement in practice. The implementation of a compliance program for expansive regulation of cross-border activity of a global financial institution is a complex undertaking involving the coordination of multiple functional areas in a financial institution, including sales and trading personnel, information technology and operational infrastructure as well as legal and compliance units to interpret the regulatory obligations and ensure compliance on an ongoing basis. We urge the Commission to recognize this in the implementation of its requirements, particularly by providing sufficient time for the market to make adjustments and come into compliance once the Proposed Guidance is finalized.

¹ Barclays Bank PLC is a multinational bank registered in England and authorized and regulated by the Financial Services Authority. Barclays is a global financial services provider engaged in personal banking, credit cards, corporate and investment banking and wealth and investment management with an extensive international presence in Europe, the Americas, Africa and Asia.

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

³ Exemptive Order Regarding Compliance with Certain Swap Regulations, 77 Fed. Reg. 41,110 (July 12, 2012).

As raised in several trade association letters on the Proposed Exemptive Order⁴, the definition of “U.S. Person” in the Proposed Guidance is a new definition, the elements of which are not all currently tracked by the industry. Further, certain aspects of the definition will require the affirmative input of counterparties. The collection and organization of responses to this categorization exercise from a large number of counterparties will require an extended period of time at both an industry and individual firm level, which work might need to be revisited once the Proposed Guidance is final. We urge the Commission to recognize the interim solutions proposed in these letters whereby firms would base their initial cross-border application compliance on a simpler definition of “U.S. Person” involving only data elements that they currently track. This would allow firms to come into compliance initially with respect to a large portion of their trading activity and to give additional time for the remainder to be appropriately and consistently categorized once the definition of “U.S. Person” has been finalized and the industry has had time to implement that final version. Additionally, the definition of “U.S. Person” in the Proposed Guidance is very broad, encompassing entities that are not resident or established in the U.S. This causes concern that several such U.S. Persons would be subject to duplicative or conflicting regulatory requirements.⁵

Finally, we would like to note our appreciation of the Commission’s attempt to resolve regulatory conflicts and respect principles of international comity by including in the Proposed Guidance the concept of substituted compliance. We are, however, concerned that the manner in which it is proposed could result in a mix of U.S and non-U.S regulations that were not designed to operate as a functional whole being applicable to particular transactions. Title VII is a holistic approach to regulating a market rather than a collection of individual mandates and, as implemented by the Commission, aspects of the Title VII regime interrelate in complex ways. A provision-by-provision approach to substituted compliance could result in a haphazard collection of regulatory requirements applying to an individual transaction in a way no legislator intended. As has been put forward in comment letters from other organizations⁶, we believe that a better approach would be for the Commission to review comparability of substitute regulatory regimes in their entirety with a principles-based analysis rather than at the level of individual requirements. Doing so respects not just the legitimate interests of other jurisdictions in regulating activity within their jurisdiction, but also the coherence of legislatively-mandated regulatory regimes. Relatedly, we respectfully request the Commission to grant additional deferral of the cross-border application of Title VII requirements where substituted compliance would otherwise be available in jurisdictions that, while the relevant regulatory regime is not yet complete and implemented, are signatories of the G20 communiqué to implement safe and sound policies to regulate the global over-the-counter derivatives market. Were the Commission to adhere rigidly to the one year period of the Proposed Exemptive Order, the result could be a confusing and unduly burdensome situation where market participants have to build the ability to comply with Title VII requirements for a limited amount of time before the regulatory regime in the other relevant jurisdiction is finalized and implemented.

⁴ See letter from Robert Pickel, International Swaps and Derivatives Association, Inc., to David Stawick, the Commission, dated August 10, 2012, and letter from Kenneth E. Bentsen, Jr., Securities Industry and Financial Markets Association, to David Stawick, the Commission, dated August 13, 2012.

⁵ In this regard, we agree with these and other points made in the letter dated August 24, 2012 from David Lawton and Stephen Bland, Financial Services Authority, to David Stawick, the Commission.

⁶ See letter from Simon Lewis, Global Financial Markets Association, to David Stawick, the Commission, dated August 13, 2012, and letter from the Futures and Options Association to the Commission, dated August 13, 2012.

We would like to thank the Commission for its thoughtful and considered treatment of this topic and would welcome the opportunity to discuss the issues presented above or provide additional information that the Commission may consider helpful.

Sincerely,

A handwritten signature in black ink that reads "Keith Bailey". The signature is written in a cursive style with a prominent loop at the end of the last name.

Keith Bailey
Managing Director
Barclays