Stefan M. Gavell
Executive Vice President and
Head of Regulatory, Industry and
Government Affairs

State Street Corporation
State Street Financial Center
One Lincoln Street
Boston, MA 02111-2900

Telephone: 617.664.8673
Facsimile: 617.664.4270

August 27, 2012

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

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

Dear Mr. Stawick:

State Street Corporation appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the "Commission") regarding its Proposed Interpretive Guidance on Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act (the "Proposed Guidance") published in the Federal Register on July 12, 2012.

State Street is one of the world's leading providers of financial services to institutional investors including investment servicing, investment management and investment research and trading. With $22.4 trillion in assets under custody and administration and $1.9 trillion in assets under management at June 30, 2012. State Street operates in 29 countries and more than 100 geographic markets.

State Street generally supports the Commission's efforts to implement Title VII of the Dodd-Frank Act, and believes the new regulatory regime being created by the Commission and other global regulators will increase transparency and competition and reduce systemic risk in global derivatives markets.

We are concerned, however, that the Proposed Guidance does not sufficiently address the many cross-border issues presented by the Dodd-Frank Act and the Commission's rulemakings, and that the Proposed Guidance will, if not substantially modified, create a U.S. regulatory regime that is unworkable for global market participants, reducing the benefits of the Congressionally-mandated derivatives markets reforms, and making U.S. firms uncompetitive in global markets. As an overall matter, we strongly support international cooperation in the development of new swaps regulations. The starting point for this cooperation should be the G20 commitments related to trade reporting, clearing, exchange or electronic trading, and capital requirements. Consistent with these commitments, however, specific regulations may vary from market to market, and U.S. firms should be permitted to compete with non-U.S. firms in these markets on a level playing field.

We are concerned that the Proposed Guidance fails to sufficiently recognize the prerogative of non-U.S. regulators to regulate markets under their jurisdiction, and instead too often attempts to impose U.S. rules on activity outside of the U.S., primarily to the competitive detriment of U.S.-based firms. While we understand and agree with the Commission's interest in imposing entity level requirements on U.S. registered firms wherever they operate, we believe transactional level requirements should defer to local regulation, provided such regulation is consistent with the overall G20 commitments. We urge the Commission to revise the Proposed Guidance accordingly.

In addition to this overall concern, there are several aspects of the Proposed Guidance that are unworkable from a practical perspective, or need more clarity. Our more detailed comments follow.

Equivalent Treatment of U.S. Swap Dealers

We do not disagree with the requirements in the Proposed Guidance that the Commission's entity level regulations be applied to both U.S.-based swap dealers and their foreign branches. For transactional-level requirements, however, we believe the Commission's rules should only be applied to transactions involving U.S. counterparties. We strongly support the concept of providing non-U.S. branches of U.S.-based swap dealers the option of adopting "substituted compliance" in non-U.S. markets, but believe the Commission should extend similar treatment to similar transactions undertaken by a U.S-based swap dealer[1]. Such transactions with non-U.S. counterparties are functionally equivalent to transactions through either non-U.S. branches for U.S.-based firms, or non-U.S. offices of non-U.S. firms, and should be treated identically. We urge the Commission to provide U.S.-based swap dealers the option of adopting "substituted compliance" for transactional-level requirements, based on regulations in effect in the domicile of the non-U.S. counterparty.

Definition of U.S. Person

We strongly oppose the Proposed Guidance's definition of "U.S. person," which we believe is unworkable and unnecessarily complex.

The numerous prongs of the Commission's proposed definition which would require a swap dealer to establish, among other things, indirect or beneficial ownership of entities, go well beyond the Commission's legitimate interest in addressing activities that 1) have a "direct and significant connection with activities in, or effect on, commerce of the United States" or 2) allow evasion of the Commission's rules. In addition, the proposed definition is unworkable, and relies on data that is unavailable in the current marketplace.

We are particularly concerned by the Proposed Guidance's "U.S. person" requirements as they relate to commodity pools, pooled accounts and collective investment vehicles. Such funds

[1] However, see our discussion of our concern with the substituted compliance proposal on page 3.

constitute a significant segment of State Street's swap dealing activity. The proposed requirement to evaluate the beneficial ownership of such funds is flawed from both a practical and policy perspective. From a practical perspective, given the nature of investment in funds and their distribution channels, identifying the domicile of every beneficial owner would be an extremely costly and labor intensive activity. From a policy perspective, it is hard to envision that the existence of even majority beneficial ownership by U.S. persons in a non-U.S. fund could trigger the "direct and significant" standard established by Congress.

We recommend the Commission adopt a revised definition of "U.S. person" more consistent with current industry practice and regulatory requirements in this area. In general, a more suitable definition should focus on the domicile of an individual, whether an entity is organized or incorporated in the U.S., or the location of an entity's principal place of business. For funds organized outside of the U.S., we suggest only funds offered publicly by the sponsor to U.S. persons be considered U.S. persons. For pension plans, we suggest the U.S. person definition exclude plans maintained outside the U.S. primarily for the benefit non-U.S. persons.

In addition, we suggest the Commission provide that, from the perspective of non-U.S. counterparties, foreign branches of U.S.-based swap dealers <u>not</u> be considered U.S. persons. Under this approach, such foreign branches of U.S.-based swap dealers would be subject to Commission regulation, including entity-level requirements and transactional-level requirements (or substituted compliance), but would not be treated as U.S. persons by non-U.S. person counterparties. Commission regulations would apply to the extent they are protective of the U.S.-based swap dealer, but the non-U.S. counterparty would be subject to local regulations, allowing equal treatment of the foreign branch in the local marketplace.

Finally, as a practical matter, we urge the Commission to clarify that swap dealers may rely on counterparty representations in making "U.S. person" determinations. Swap dealers are not typically in a position to independently obtain the type of information needed to make this determination, either at the inception of the relationship or over time, and should be permitted to rely on information provided by the counterparty.

Substituted Compliance

We support the concept of substituted compliance as a means to allow deference to local, non-U.S. laws and regulations for transactional-level requirements. We believe such determinations should be based on an overall, principles-based assessment of the non-U.S. jurisdictions' adoption of the G20 commitments. We are concerned by the provisions of the Proposed Guidance which suggest, however, that the determination will be based on a rule-by-rule analysis, and perhaps even approve substituted compliance for some of the Commission's transactional-level rules but not others.

We are also concerned by the potential timing issues which may be presented by the proposed substituted compliance regime. The new regulatory regime will necessarily evolve over different timeframes in different jurisdictions; in all likelihood, many of the Commission's transactional-level rules will be effective before corresponding or similar rules in other jurisdictions. It does not seem reasonable to impose U.S. transactional-level rules on transactions with non-U.S. persons while these rules are being enacted.

As a result, we urge the Commission to 1) clarify that substituted compliance determinations will be principles, not rule-by-rule, based, and will be approved based on general consistency with the G20 commitments, and 2) provide sufficient transition time before applying U.S. transactional-level requirements to transactions with non-U.S. counterparties to allow development of appropriate regulatory regimes in other jurisdictions.

Non-US Privacy Laws or Employment Laws and Regulations

We are concerned that some aspects of the Proposed Guidance, such as swap data reporting and various employment requirements (*e.g.* fingerprinting, criminal background checks, etc.) could run afoul of numerous non-U.S. privacy and employment laws and regulations. We urge the Commission to conduct further international discussions on this issue, and, in the meantime, provide appropriate relief until these issues are resolved.

Clearing

While the Proposed Guidance focuses on the cross-border treatment of swap dealers, it does not address similar questions related to swaps clearing, including issues related to registration requirements for non-U.S. clearing members or potentially conflicting clearing mandates. We are particularly concerned that the proposed definition of U.S. person may be inappropriately applied to both futures and swaps clearing member requirements, upsetting long-standing Commission rules and industry practice. To the extent the Commission feels the need to revise its historical approach to these matters, we urge the Commission to address them in a separate rulemaking, with full opportunity for public comment.

Once again, State Street appreciates the opportunity to comment on the Proposed Guidance. Please feel free to contact me with any questions.

Sincerely,

Stefan M. Gavell