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August 27, 2012

By Electronic Mail

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

Re: Exemptive Order Regarding Compliance with Certain Swap Regulations (3038-AD85); Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act (3038-ADS7)[1]

Dear Mr. Stawick:

Credit Suisse appreciates the opportunity to provide our comments on the proposed Exemptive Order Regarding Compliance with Certain Swap Regulations (the "**Exemptive Order**") and the proposed Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act (the "**Guidance**," and together with the Exemptive Order, the "**Proposals**") to the Commodity Futures Trading Commission (the "**Commission**"). We support the Commission's efforts to provide guidance and relief on the cross-border application of Title VII of Dodd-Frank. We are concerned, however, that the extraterritorial application of the Proposals is overbroad and would result in significant and unnecessary regulatory burden and unintended consequences. This letter highlights our key concerns with the Proposals and our recommendations for modifying them.[2]

I. The Definition of U.S. Person Is Overbroad

The definition of "U.S. person" is central to the application of Title VII's swap provisions and the Commission's implementing rules. Any definition of U.S. person will require significant work to incorporate into a swap dealer's systems, policies and procedures. We are concerned, however, by the complexity and breadth of the Commission's proposed definition of U.S. person. For these reasons, we strongly recommend that the Commission adopt a phased approach to the definition of U.S. person, whereby a simpler, interim definition of U.S. person with safe harbors for firms' good faith determinations is in place for the duration of the Exemptive Order, and a

[1] 77 Fed. Reg. 41,110, (July 12, 2012); 77 Fed. Reg. 41,214 (July 12, 2012).

[2] We also concur with the comment letters submitted by the Institute of International Bankers and the Securities Industry and Financial Markets Association addressing the issues raised by the Proposals.

modified version of the Commission's proposed definition of U.S. person in in place thereafter.

A. The Commission Should Amend the Definition of U.S. Person in the Exemptive Order

Even if the definition of U.S. Person in the proposed Guidance were modified in accordance with the recommendations we set forth below, swap dealers would need additional time, after the Guidance is released in final form, to implement appropriate procedures and incorporate counterparty information into their systems and documentation. The challenge in part stems from the fact that swap market participants have thus far not been required to determine whether their counterparties qualify as U.S. persons and do not have the information on hand that would permit them to determine which of their counterparties meet the definition of U.S. person as set forth in the Guidance. Although regulated entities collect certain information relating to their counterparties, including residence and jurisdiction of organization information for tax, know your counterparty and anti-money laundering purposes, this does not cover the very detailed level of information that they would be required to collect under the proposed definition of "U.S. person." Furthermore, the proposed definition differs substantially from any definition that the Commission or the Securities and Exchange Commission has adopted previously, so further diligence is required to determine whether a large number of market participants are U.S. persons under the CFTC's proposed definition.

Therefore, we recommend that the Exemptive Order, which, in its proposed form incorporates the Guidance's definition of U.S. person, be revised to include an interim definition of U.S. person that is simpler and more readily implementable and is based on the information that swap market participants currently maintain. This definition should be in place during the pendency of the Exemptive Order. Specifically, a person should be deemed to be a U.S. person only if such person is:

- a natural person who is a resident of the United States; or
- a corporation, partnership, LLC, business, trust, association, joint-stock company, fund, or any form of enterprise similar to any of the foregoing that is organized under the laws of the United States or has its principal place of business in the United States.

This interim definition of U.S. person more closely tracks the information that we and other swap market participants currently collect. During the pendency of the Exemptive Order, a safe harbor with respect to the definition of U.S. person should be available where swap market participants act in good faith reliance on existing data on their systems or have no actual knowledge that a person is a U.S. person, without any need for additional diligence.

Finally, we believe that this interim definition of U.S. person should apply for all purposes involving the registration and regulation of swap dealers under Title VII, as well as requirements more generally applicable to unregistered swap market participants. The

interim definition should be in place at least until the Guidance is finalized and a sufficient transition period has been provided for swap market participants to implement the final definition of U.S. person into the systems, policies and procedures. This simpler definition would allow Credit Suisse and other swap market participants to comply with the terms of the Exemptive Order that apply to swaps with U.S. person counterparties, such as swap data repository ("**SDR**") reporting, large trader reporting, real-time reporting, and external business conduct requirements and determine with confidence which entities must register with the Commission.

B. The Commission Should Revise the Definition of U.S. Person in the Guidance

We believe that the Commission should revise the Guidance to (i) narrow the definition of U.S. person, and (ii) permit a swap market participant to rely exclusively on its counterparties' representations, unless the swap market participant has information that would cause a reasonable person to question the accuracy of the representation.

Our most pressing concern with respect to the definition of U.S. person relates to commodity pools, pooled accounts and collective investment vehicles (collectively, "**funds**"). First, the proposed U.S. person definition would treat a fund organized outside the United States as a U.S. person if a "majority ownership or equity interest is held, directly or indirectly, by a U.S. person(s)."[3] This would mean that a fund could fall within the definition of U.S. person even if it is organized outside the United States, operates outside of the United States, and has no assets in the United States. The Guidance does not specify how this "directly or indirectly" criterion should be applied, and it is unclear how firms can obtain the information necessary to make this determination, particularly within the time period before the provisional registration deadline. Some funds are traded on European exchanges and, although those funds are not marketed to U.S. investors or organized or operated in the United States, the funds are unable to track investor status. The proposed definition of U.S. person is further complicated by the fact that the ownership of funds can change frequently over time.

Second, the proposed definition of U.S. person provides that even if a fund lacks significant U.S. ownership, where the operator of the fund would be required to register as a commodity pool operator ("**CPO**") under the Commodity Exchange Act (the "**CEA**"), that fund would fall within the definition of a U.S. person. The Commission's CPO registration rule provides that a non-U.S. CPO does not need to register as a CPO provided that its transactions are executed "on behalf of persons located outside the United States, its territories or possessions." This means that a non-U.S. fund would fall within the definition of a U.S. person if just one of its owners was based in the United States. For example, some offshore funds may have an adviser or sub-adviser that is registered as a commodity pool operator, even though there are few U.S. investors. We believe that it would be unduly burdensome and unrealistic to require each swap market participant to determine whether every shareholder of a fund counterparty is based in the United States. For these reasons, we propose that a fund not be considered a U.S. person

[3] Order at 41,114.

to the extent it is organized outside the United States and is subject to foreign regulation that is consistent with and comparable to U.S. law. To the extent the fund is not so regulated, then the fund would be a U.S. person only where it is: (1) organized under the laws of the United States or (2) marketed to U.S. residents.

Furthermore, we strongly believe that a swap market participant should be permitted to rely exclusively on counterparty representations when determining whether a counterparty is a U.S. person, unless the swap market participant has information that would cause a reasonable person to question the accuracy of the representation. This standard would be consistent with the standard that the CFTC adopted in its external business conduct rules with respect to the ability of a swap dealer to rely on representations.[4] The definition of U.S. person is so central to the application of the Title VII provisions and implementing regulations that bright-line tests and reliance on counterparty representations are necessary to ensure a workable implementation of Title VII.[5] The need to be able to rely on counterparty representations is even more pressing considering the many aspects of the proposed U.S. person definition that are principally or solely within the knowledge of our counterparties (*e.g.*, the percentage ownership by U.S. persons and the CPO registration requirement).[6] Without these modifications, swap market participants may be hesitant to enter into swaps with counterparties whose status is not readily determinable.

Even with the ability to rely exclusively on counterparty representations, it will take time to obtain such representations from our counterparties and incorporate that data into our systems and processes. Therefore, we believe that compliance deadlines should be modified and safe harbors granted for good faith determinations regarding U.S. person status.

C. The Application of the U.S. Person Definition Should Be Limited to Swaps and not Extend to Other Areas Subject to Regulation by the Commission

Although we believe that the Commission should adopt a single definition of "U.S. person" that applies for all swap dealer registration and regulation purposes, we do not believe that this definition should override existing market practice as it relates to

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[4] *See* 17 C.F.R. 23.402(d) ("A swap dealer or major swap participant may rely on the written representations of a counterparty to satisfy its due diligence requirements under this subpart, unless it has information that would cause a reasonable person to question the accuracy of the representation. If agreed to by the counterparties, such representations may be contained in counterparty relationship documentation and may satisfy the relevant requirements of this subpart for subsequent swaps offered to or entered into with a counterparty, provided however, that such counterparty undertakes to timely update any material changes to the representations.")

[5] We believe that such an approach would nonetheless allow the Commission to retain sufficient discretion to deem a person to be a U.S. person in connection with its anti-evasion authority under Section 2(i) of the CEA.

[6] The use of representations should also be permitted for purposes of determining whether a person is guaranteed by a U.S. person or is a "non-U.S. affiliate conduit."

other areas overseen by the Commission, such as futures commission merchant and introducing broker registration. We appreciate that the Commission's recent rulemaking on intermediary registration, which maintains the domicile-based test for determining whether introducing broker registration is required, evidences that the Commission intends to maintain a distinction between the definition of U.S. person for swap dealer registration and regulation and other regulatory purposes.[7]

II. The Exemptive Order and Guidance Should Address the Timing and Process of Swap Dealer Registration

A. The Provisional Registration Deadline Should Not Occur until a Reasonable Period of Time after the Final Exemptive Order Is Issued

We appreciate that the Commission has an interest in ensuring that its rules and regulations are implemented in a timely manner. At the same time, we are concerned that there may not be sufficient time to determine which entities must register on the provisional registration deadline and prepare for registration once the final Exemptive Order is issued. It is important that swap market participants have time, once the final Exemptive Order is issued, to assess their swap dealer registration strategy, confer and coordinate with home country regulators, and prepare to comply with applicable swap dealer rules before being required to provisionally register. For these reasons, we respectfully request that the Commission issue the Exemptive Order as soon as possible and, in any event, sufficiently prior to the provisional registration deadline. Furthermore, the Exemptive Order should delay the provisional registration deadline until a reasonable period of time after the final Exemptive Order is issued.

We likewise believe that additional time is needed for affiliates that, in light of the expansive scope of the swap dealer registration and compliance requirements, plan to transfer their swap positions to their principal swap dealing affiliate and thereafter terminate their swap dealing with U.S. persons. The process of transferring these positions and counterparty relationships takes time, particularly for counterparty consents to be obtained and new documentation to be finalized. An affiliate should be permitted to continue to enter into new trades while the transition plan is pursued without having to register for such activity. This is particularly important given that many of our clients have master confirmation agreements and regularly execute and increase or decrease their trades under those agreements. It would be wasteful of the Commission's and the industry's resources for an entity to register for the interim period in which it is acting as a swap dealer, only to then de-register when its swap dealing has transitioned to its affiliate. As such, we request that the Commission modify the Exemptive Order to provide additional time, past the provisional swap dealer registration deadline, for "transition affiliates" to complete their transition plans, provided certain conditions are met. Specifically, (1) the transition affiliate must be an affiliate of an entity that is a registered swap dealer; (2) the transition affiliate and the affiliated swap dealer must have an arrangement pursuant to which, within a specified transition period, the transfer

[7] *See* Registration of Intermediaries, RIN 3038-AC96 (adopted Aug. 17, 2012) (pending publication in the *Federal Register)*.

affiliate will transfer its U.S. swap dealing positions or activities to the registered swap dealer or will itself register as a swap dealer; and (3) the swap dealer notifies the Commission of such arrangement.

B. The Exemptive Order and Guidance Should Revise the Scope of the Registration Process for Non-U.S. Applicants

We believe that the swap dealer registration process, as applied to non-U.S. registrants, is inconsistent with the Commission's proposed relief for non-U.S. registrants with respect to entity-level requirements. While the Guidance accommodates the unique circumstances of non-U.S. applicants in many ways, it does not do so with respect to the registration process, for which there are certain challenges facing non-U.S. applicants. Therefore, we request the Commission to address the swap dealer registration process, including Forms 7-R and 8-R, in its Exemptive Order and provide permanent relief in the Guidance to non-U.S. registrants from certain aspects of the swap dealer registration process. Under the Commission's final swap dealer registration rule, all of the "principals" of a swap dealer, which includes officers, directors, and persons who own ten percent or more of the outstanding shares of any class of equity securities, other than non-voting securities, of the registrant or otherwise have the power to exercise a controlling influence of the registrant's swaps activities, must file a Form 8-R with the Commission.[8] This requirement is over-inclusive as applied to global firms that have significant non-U.S. swap dealing and other activities. We recommend that the Commission provide that a non-U.S.-domiciled applicant or registrant need only register the senior officers of the department or division that is conducting the activities that give rise to the swap dealer registration requirement. In addition, we believe that non-U.S. applicants and registrants should be exempt from the requirement to represent that none of its associated persons are subject to statutory disqualification. Instead, the Exemptive Order and Guidance should provide that a non-U.S. applicant or registrant need only provide such representation with respect to associated persons who are directly involved in soliciting or accepting swaps with U.S. persons, or directly supervising individuals so involved.

Furthermore, it is of particular importance to Credit Suisse that the Commission modify for non-U.S. applicants the requirement to represent on Form 7-R that it "is not subject to any blocking, privacy or secrecy laws which would interfere with or create an obstacle to full inspection of the applicant's books and records by" the Commission, the National Futures Association, or the Department of Justice. Certain non-U.S. firms may not be able to make this representation accurately. Form 7-R should be revised so that such firms are not placed in the position of either forgoing registration or risking non-compliance with either U.S. or local law in the event of a request for access to our books and records. Access to an applicant's books and records should be addressed by the memoranda of understanding that the Commission contemplates entering into with local regulators in the Guidance.

[8] Registration of Swap Dealers and Major Swap Participants, 77 Fed. Reg. 2,613 (Jan. 19, 2012).

We likewise believe that the Commission should refrain from exercising its jurisdiction with respect to members of a non-U.S. registrant's business unit who only engage in swaps activities with other non-U.S. persons. For example, the Commission should impose its internal business conduct requirements only on a non-U.S. swap dealer's associated persons who engage in swap dealing with U.S. persons and should not impose such requirements on employees who do not deal with U.S. persons. Otherwise, the Commission would be unreasonably extending its jurisdiction over activities that have no direct or significant connection with United States commerce.

C. The Application of Certain Commission Rules Should Be Delayed until a Reasonable Period of Time after the Provisional Registration Deadline

The application of certain Commission rules to a non-U.S. swap dealer depends on knowing whether the counterparty is a swap dealer or major swap participant, in addition to whether the counterparty is a U.S. person. This is the case, for example, for SDR reporting and real-time reporting, where the reporting hierarchy depends on the status of the counterparty. In addition, certain obligations under the external business conduct rules apply only to counterparties that are not swap dealers or major swap participants. However, the swap dealer provisional registration deadline does not take into account that swap market participants will need time, as a practical matter, after the provisional registration deadline to determine which of their counterparties are registered as swap dealers or major swap participants and therefore comply appropriately with the Commission's rules. Neither the Exemptive Order nor the Guidance specify how the Commission plans to address this timeline. Clearly, it is unrealistic to expect that registrants would know, on the provisional registration deadline, which of their counterparties are also registered with the Commission. In light of this, we propose that the Commission modify the Order to provide for an adequate period after the provisional registration deadline before the rules that depend on the counterparty's regulatory status take effect.

III. The Commission Should Amend the Cross-Border Application of the Aggregation Rule

Title VII and the Commission's final rules defining "swap dealer" (the "**Entity Definitions**")[9] provide that a person need not register as a swap dealer if that person's swap dealing falls below the *de minimis* threshold, but the Entity Definitions also require that a person aggregate its swap dealing activities with "any other entity controlling, controlled by or under common control with the person."[10] Particularly if there is no exclusion of registered swap dealers from the aggregation requirement, this would mean that in the event a non-U.S. affiliate of a non-U.S. swap dealer entered into only a minor

[9] Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 Fed. Reg. 30,596 (May 23, 2012).

[10] 17 C.F.R. 1.3(ggg)(4).

amount of swap dealing transactions (e.g., $1 million with U.S. persons), it would have immediately exceeded the *de minimis* threshold. Such a result would effectively eviscerate the utility of the *de minimis* threshold. Therefore, we recommend that the Commission modify the aggregation rule so that a person may exclude from its swap dealer analysis the swaps of its affiliates that are swap dealer registrants. Providing this relief would mean that a non-U.S. affiliate of a non-U.S. swap dealer could have the ability to engage in some swap dealing with U.S. persons and still qualify for the *de minimis* exemption. This relief would also reduce the monitoring burden that would otherwise arise from requiring entities to ensure that they do not engage in *any* amount of swap dealing with U.S. persons and would allow the *de minimis* threshold to have substantive utility. To otherwise require entities with minimal U.S. swap dealing activities to register with the Commission is unnecessary and appears to reach beyond the Commission's extraterritorial jurisdiction, as these smaller entities' activities likely do not have a direct and significant connection with United States commerce.

Furthermore, we appreciate that the Commission, in the Guidance, has sought to limit the effect of this for non-U.S. persons by proposing to require that a non-U.S. person only aggregate the swap dealing activities of its non-U.S. affiliates, but we believe that the aggregation rule, as applied to non-U.S. persons, is far too broad and is unnecessary for achieving the regulatory goals of Title VII. We therefore propose that the Commission modify the aggregation rule in the Guidance so that a non-U.S. person need not aggregate its swaps with any of its affiliates for purposes of determining whether it must register as a swap dealer. We do not believe that the Commission's proposed cross-border application of the aggregation rule is necessary to ensure the appropriate regulation of activities that significantly affect U.S. commerce. Instead, non-U.S. affiliates should be able to conclude that they do not need to register solely on the basis of the nominal amount of their swaps activities.

Finally, if the Exemptive Order is finalized before the Guidance, we recommend that the Commission address the aggregation rule in the Exemptive Order in a manner consistent with these recommendations.

IV. The Commission Should Revise the Guidance's Approach to Central Booking Models

A. Inter-Affiliate Risk Transfers Should Not Trigger a Registration Requirement

Credit Suisse intends to register a non-U.S. entity as a swap dealer, which will serve as our central booking entity. However, we often transfer the risks of that entity's swaps activities through back-to-back transactions with affiliates in jurisdictions that are best suited to manage the risk of those positions. For example, a U.S. affiliate is best suited to engage in hedging activities related to equity swaps for which the underlying securities are traded on a U.S. securities exchange.

We believe that an internal transfer of the risk of swap dealing positions (generally, through back-to-back inter-affiliate swaps) from a registered swap dealer to its

U.S. affiliate should not require such U.S. affiliate to register as a swap dealer. Because there is no privity of contract between the U.S. affiliate and the counterparty to the non-U.S. swap dealer, the transfer of risk to the U.S. affiliate should be treated as a distinct transaction that does not trigger a swap dealer registration requirement or other Title VII requirements that would not otherwise apply to inter-affiliate swaps. In addition, requiring the U.S. affiliate to register as a swap dealer would result in duplicative, unnecessary regulation. The non-U.S. swap dealer, which would be the entity that is engaged in the client-facing activity and is the legal counterparty to the swap, would be registered as a swap dealer and would be required to comply with Title VII. Because the U.S. affiliate does not engage in client-facing activity with the counterparty and the counterparty has no credit exposure to the U.S. affiliate, no benefit would accrue to the counterparty from requiring the U.S. affiliate to register. Furthermore, the Commission would not receive any additional information about the swaps activities that it would not already receive from the swap dealer affiliate that is registered with the Commission.

In addition, our recommended approach would resolve an inconsistency in the treatment of inter-affiliate swaps between the Guidance and the Entity Definitions. Whereas the Entity Definitions explicitly carve inter-affiliate swaps out of the swap dealer analysis, the Guidance suggests that any central booking entity for swaps with U.S. persons must register as a swap dealer, regardless of whether the swaps are booked into that entity directly or indirectly through back-to-back inter-affiliate swaps.[11]

B. Soliciting or Negotiating Swaps for an Affiliated Swap Dealer Should Not Trigger a Registration Requirement

In some cases, a non-U.S. swap dealer's affiliate will solicit or negotiate swap transactions that are then booked directly into the non-U.S. swap dealer. The Guidance clearly states that if an affiliate of a swap dealer is merely acting as a disclosed agent and does not meet the definition of a swap dealer, then the Dodd-Frank requirements applicable to swap dealers would not apply to the affiliate, provided that the agency relationship is properly documented and the principal remains primarily responsible for the actions of the affiliate.[12] However, the Guidance does not state that the affiliate does not have to register as a result of these agency activities. We therefore request clarification from the Commission that acting as agent in this manner does not trigger a swap dealer registration requirement. As discussed above, we believe that swaps should be attributed only to the principal and legal counterparty to the swap for the purpose of the swap dealer registration analysis. We note further that this result would not detract from the requirement that such agents comply with applicable Commission rules, such as the prohibition on statutory disqualification and business conduct rules, that apply by virtue of the fact that they are acting as associated persons of their affiliated swap dealer. To require the entity that employs the agents to also register as a swap dealer would merely result in duplicative or unnecessary regulation and significant and unnecessary cost and burden.

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[11] Guidance at 41,222.

[12] Guidance at 41,231.

V. The Division and Breadth of Entity-Level and Transaction-Level Requirements Should Be Modified

We support the Commission's proposal to distinguish between entity-level and transaction-level requirements and to provide for substitute compliance. Under the Guidance, SDR reporting is treated as an entity-level requirement and real-time reporting is treated as a transactional-level requirement. We believe that all reporting requirements should be categorized as transaction-level requirements. This would be appropriate first and foremost because all reporting requirements operate on a swap-by-swap basis. Treating all reporting requirements as transaction-level requirements also would be more efficient for firms, given that the systems for SDR reporting and real-time reporting are similar and many of the reporting fields overlap. Under the Guidance, the real-time reporting rules would apply to a subset of a non-U.S. swap dealer's swaps (namely, swaps with U.S. persons, non-U.S. persons guaranteed by U.S. persons, and non-U.S. affiliate conduits), whereas the swap data repository reporting rules would apply to all of a non-U.S. swap dealer's swaps. This mismatch in application of the two sets of reporting requirements is overly complicated and would be simplified by requiring non-U.S. swap dealers to comply with SDR reporting in the same manner that they comply with real-time reporting. Related, we believe that both sets of reporting requirements should apply to a non-U.S. swap dealer only when such non-U.S. swap dealer is dealing with U.S. persons, excluding foreign branches of U.S. persons. In this way, the reporting rules would apply in the same manner as the external business conduct rules and would not apply to swaps with foreign branches of U.S. persons, non-U.S. affiliate conduits and non-U.S. persons guaranteed by U.S. persons.

Categorizing SDR reporting as a transaction-level rule, and requiring that only swaps with U.S. persons be reported under the real-time and SDR reporting rules, would mitigate the privacy and data protection law issues that are implicated by the Commission's proposal to require that non-U.S. swap dealers report their transactions with certain wholly non-U.S. counterparties to a swap data repository. Our home country supervisory authority, the Swiss Financial Market Supervisory Authority FINMA, recently submitted a comment letter to the Commission identifying concerns regarding the apparent conflict between the Commission's proposed extraterritorial application of its rules and Swiss law.[13] Although substituted compliance would be available for reporting of swaps with other non-U.S. persons (such as non-U.S. affiliate conduits), the Guidance would require that the Commission have direct access to the swap data stored at non-U.S. repositories. We believe that this condition should be removed in light of privacy issues and that the Commission should rely instead on memoranda of understanding with non-U.S. supervisory authorities or other solutions.

[13] *See* Comment letter submitted to the Commission by the Swiss Financial Market Supervisory Authority FINMA (Jul. 5, 2012) ("[W]e have serious doubts as to whether the registration as a swap dealer of a Switzerland-domiciled bank as a whole can be reconciled with Swiss practice. . .[C]ertain of the proposed reporting requirements, in particular those regarding trade data and end-customer data, and access requirements may raise Swiss privacy and data protection issues as well as enforcement difficulties.")

VI. The Commission Should Coordinate the Implementation of Substituted Compliance with the Finalization of Non-U.S. Swaps Rules

While we support the Commission's proposal to provide temporary exemptive relief and to permit substituted compliance, we are concerned by the misalignment in timing of the expiration of the temporary exemptions and the progress of the principal non-U.S. jurisdictions in completing their swaps rules. This misalignment in timing threatens to frustrate the intended benefits of both of the Proposals.

A. Detailed Substituted Compliance Plans Should Not Be Required under the Exemptive Order

In order to take advantage of the temporary exemptive relief, the proposed Exemptive Order would require non-U.S. swap dealers, within 60 days of applying for registration, to submit a compliance plan to the National Futures Association setting forth how it plans to address, in good faith, the applicable requirements under the CEA and related rules and regulations on the effective date of the Proposed Interpretive Guidance.[14] The compliance plan must indicate whether the swap dealer plans to seek comparability determination from the Commission, and if so, a description of the relevant local requirements. Two factors make this difficult to implement. First, as noted above, non-U.S. jurisdictions have not yet finalized their swaps regulations and may not do so until after the expiration of the Exemptive Order. Second, the exact contours of what is required for a "comparability" determination remains subject to comment in the Guidance, thereby making it difficult for a firm to know what information is relevant for the compliance plan. In light of these two issues, we request that the Commission confirm that a firm may comply with the compliance plan requirement by submitting a notice filing that indicates that that the firm intends to undertake a comparability determination with respect to certain requirements as soon as applicable foreign regulations are finalized.

B. The Term of the Exemptive Order Should Extend until Non-U.S. Jurisdictions Have Adopted Swaps Regulations

Under the proposed Guidance, to use substituted compliance, a non-U.S. swap dealer must analyze the Commission's regulations against applicable non-U.S. regulations, submit an application requesting to use substituted compliance with respect to those non-U.S. regulations that it believes are comparable to the Commission's regulations, and receive a comparability determination from the Commission. However, because non-U.S. jurisdictions are still in the process of finalizing their swaps regulatory regimes, non-U.S. swap dealers may be unable to complete their comparability analyses, let alone receive the Commission's approval to use substituted compliance, before the Exemptive Order expires. It would be unduly burdensome, and contrary to the goals of the Guidance and principles of international comity, to require non-U.S. swap dealers to comply with CFTC regulations for the interim period between the expiration of the Exemptive Order and the time when comparable non-U.S. regulations are finalized, only

[14] Proposed Exemptive Order at 41,112-41,113.

to then redevelop their systems and procedures in order to comply with applicable non-U.S. requirements. Therefore, we believe that the Exemptive Order should continue to apply until a reasonable period of time after comparable non-U.S. regulations are finalized and non-U.S. swap dealers have time to request a comparability determination from the Commission.

In addition, we believe that the Commission's proposed requirement for non-U.S. swap dealers to notify the Commission of any material changes to information submitted in support of the comparability determination, after the Commission has approved a substituted compliance request, would be burdensome. While we appreciate that the Commission contemplates that it would enumerate the specific foreign requirements that, if changed, would trigger a notification requirement, we believe that further accommodations should be made to make substituted compliance more workable. In particular, we believe that non-U.S. swap dealers should be able to delegate the requirement to notify the Commission of materials changes to a third party, trade association, or home country regulators.

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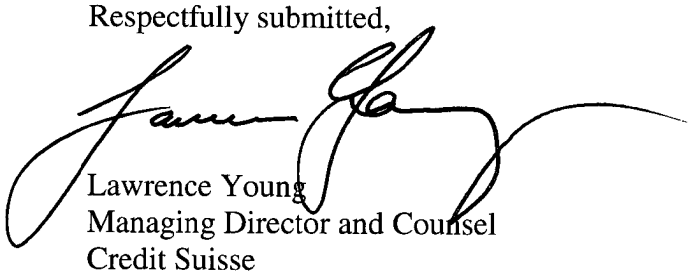
We thank the Commission for its consideration of our comments on the Proposals and how to implement Title VII in a manner that appropriately limits its extraterritorial application. We would be pleased to work with the Commission and other interested parties to advance this process. If you have any questions, please do not hesitate to contact the undersigned at (212) 325-1866.

Respectfully submitted,



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