



27 August 2012

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

Dear Mr Stawick

**Comment Letter on the Proposed Interpretive Guidance on the Cross-Border
Application of Certain Swaps Provisions of the Commodity Exchange Act
(RIN 3038-AD57)**

The Australian Financial Markets Association (AFMA) welcomes the opportunity to comment on Proposed Interpretive Guidance on the Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act (Proposed Guidance).

AFMA is the leading industry association promoting efficiency, integrity and professionalism in Australia's financial markets and provides leadership in advancing the interests of all market participants. Our membership covers the broad range of global banks and securities firms with operations in Australia and includes Australia's major banks which all carry out banking activities in the United States.

AFMA is a member of the International Council of Securities Association and we endorse the comments made to you by that group and the co-signed letter from the authorities in Australia, Hong Kong and Singapore on the Proposed Guidance.

International Impact of Proposed Guidance

AFMA is concerned that the Proposed Guidance does not adequately integrate with global commitments on reforms to the OTC derivatives market and regulatory developments in other jurisdictions thereby placing market participants into potentially untenable compliance positions. Affected non-US persons could have to comply with two sets of regulations, which may be overlapping and conflicting, imposed by the US

and individual non-US regimes. The lack of clarity and specificity in a number of areas of the Proposed Guidance deepens the uncertainty market participants face in addressing compliance with the new regime.

A core understanding that came out of the 2008 global financial crisis is the degree of global interconnectedness between financial institutions and financial markets is very great. As a result, the September 2009 G-20 commitments included the undertaking to – *“take action at the national and international level to raise standards together so that our national authorities implement global standards consistently in a way that ensures a level playing field and avoids fragmentation of markets, protectionism, and regulatory arbitrage”*. Consistent with the collective intention of the G-20, AFMA advocates the Commission taking into close account with its Proposed Guidance the need for coherent and consistent regulation of financial markets across the globe.

Substituted Compliance

AFMA welcomes the proposal for ‘substituted compliance’, which would in principle allow non-U.S. swaps dealers and major swaps participants (MSPs) to meet certain U.S. regulatory requirements by complying with comparable and comprehensive regulatory requirements in their home jurisdictions.

AFMA supports the Commission’s proposal to rely on system of substituted compliance as it would provide a more flexible and more appropriate compliance process for non-U.S. swap dealers and MSPs. The Proposed Guidance is significant because, by allowing for substituted compliance, the way is open to meeting the regulatory challenges posed by the global swaps market. An appropriately designed approach to substituted compliance would be consistent with global harmonisation on cross-border swaps regulation since, rather than relying exclusively on its own resources, under a system of substituted compliance the Commission would be able to rely on the resources and experience of regulators in other jurisdictions. This is an extremely important issue for market participant outside the United States, who strongly support efforts to develop globally consistent regulatory reforms and see substituted compliance as an important tool toward achieving that end.

However, we are concerned about how substituted compliance as described in the Proposed Guidance would be implemented in practice, since there appears to be some variance around suggested approaches that could be used. We are particularly concerned around wording that suggests the Commission intends for substituted compliance to be granted only in those cases where it finds rule-by-rule equivalence in the regulations of non-U.S. jurisdictions. Such an approach would significantly raise compliance costs for non-U.S. swaps dealers and MSPs, which in turn would increase costs for the U.S. and non-U.S. firms that are reliant upon the global swaps market without any commensurate reduction in systemic risk.

Therefore, while we support the concept of substituted compliance, we suggest that the Commission take a much broader, principles-based approach toward substituted compliance than is proposed in the Proposed Guidance. Rather than focusing on whether each swaps requirement has a directly comparable provision in a non-U.S.

jurisdiction, we propose that the Commission focus on whether the regulatory objectives, intended outcomes and supervisory resources and practices in individual jurisdictions are substantially similar to those in the United States. In effect, rather than looking for strict comparability, we suggest the Commission concentrate its resources on developing substituted compliance agreements with regulatory authorities in foreign jurisdictions that share similar regulatory approaches and are oriented toward the same outcomes.

We also suggest that U.S. and non-U.S. regulators should take the lead in understanding each other's regulatory regimes and explaining why substituted compliance would be appropriate, rather than placing that burden on non-U.S. swaps dealers and MSPs.

Once again, we are grateful for the opportunity to provide our comments on the Proposed Guidance.

Yours sincerely



David Love
Director Policy and International Affairs