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February 6, 2013

Ms. Melissa Jurgens
Secretary of the Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, DC 20581

Re: Comment to Further Proposed Guidance Regarding Compliance with Certain Swap Regulations (RIN 3038-AD85)

Dear Ms. Jurgens:

Sumitomo Mitsui Banking Corporation ("SMBC") and Mizuho Corporate Bank, Ltd. ("MHCBC") are Japanese banks who have elected to comply with the Commodity Futures Trading Commission's ("CFTC") swap dealer registration rules by provisionally registering a US-organized swap dealer. Both banks have a material global presence in the international banking business and are each adversely affected by the CFTC's proposed aggregation rule for which the CFTC seeks comment. Because of the adverse effects, which SMBC and MHCBC believe are unintended, they request that the CFTC continue to utilize the approach to de minimis aggregation as set forth in its Final Exemptive Order Regarding Compliance with Certain Swap Regulations (the "Final Order"). In addition, SMBC and MHCBC request that for non-US persons not previously engaged in US facing swap dealing activity, the CFTC exclude the swap dealing activities of any registered swap dealer, wherever located, from aggregation under the de minimis exception.

A. Background

1. Applicable CFTC Rules

CFTC Regulation 1.3(ggg)(4) provides that a person need not register as a swap dealer "so long as the swap positions connected with those dealing activities into which the person—or any other entity controlling, controlled by or under common control with the person—enters over the course of the immediately preceding 12 months ... have an aggregate gross notional amount of no more than \$3 [now \$8] billion".

Under Section 3 of the Final Order, non-US persons are not required to aggregate US-facing swap dealing activity of their US affiliates. Section 3 of the Final Order also does not require a non-US person that was engaged in swap dealing with US persons as of the effective date of the Final Order and that is affiliated with a registered swap dealer (a "Non-US De Minimis Dealer") to aggregate the US-facing swap dealing activity of a non-US affiliate provided that (1) the non-US affiliate was also engaged in dealing activity as of the effective date of the Final Order or (2) the non-US affiliate is registered as a swap

dealer. Additionally, a non-US entity need not aggregate the swap dealing activity of a non-US affiliate if that activity is with non-US persons.

As such, under the Final Order as it applies to CFTC Rule 1.3(ggg)(4), a Non-US De Minimis Dealer need only count its own US-facing dealing activity in determining its eligibility for the de minimis exception to swap dealer registration, so long as its group does not create new non-US entities to engage in US-facing swap dealing activity. Materially, a Non-US De Minimis Dealer is not required to count the US-facing dealing activity of a US affiliate that is registered as a swap dealer in determining whether it must register as a swap dealer.

Concurrently with the publication of the Final Order, the CFTC also published Further Proposed Guidance Regarding Compliance with Certain Swap Regulations (the "Further Proposed Guidance"). Therein, the CFTC proposed an alternative interpretation to CFTC Rule 1.3(ggg)(4) such that a non-US person would be required to include in its de minimis calculation the US-facing dealing activity of all of its affiliates globally, except for the activity of any non-US affiliate that is registered as a swap dealer (the "Proposed Aggregation Rule").

2. Application to SMBC and MHC

SMBC and MHC are Japanese banking corporations with global businesses that include swaps and other derivatives. Unlike other non-US banking corporations that have decided to register the head offices of their parent banks as swap dealers, SMBC and MHC decided to conduct their US-facing swap dealing activity primarily through US subsidiaries. Thus, internationally, SMBC and MHC themselves and one or more of their non-U.S. affiliates may book swaps with US persons in reliance on the de minimis exception found in CFTC Rule 1.3(ggg)(4). Domestically, SMBC has provisionally registered SMBC Capital Markets, Inc. ("SMBC-CM"), as a swap dealer. MHC has provisionally registered Mizuho Capital Markets Corporation ("MCMC") as a swap dealer. SMBC-CM and MCMC are each organized in Delaware. Historically, each of SMBC and MHC, their respective non-US affiliates and SMBC-CM and MCMC have entered into various swaps with US persons. As is the case for many other firms, many of those legacy swaps between SMBC, MHC or their respective non-US affiliates and US persons are and will remain outstanding for some time.

Under the Final Order, SMBC and MHC, as Non-US De Minimis Dealers, are not required to count the US-facing swap dealing activity of SMBC-CM and MCMC, respectively, in determining whether they must register as swap dealers. In contrast, implementation of the Proposed Aggregation Rule would have a material adverse effect on SMBC and MHC by possibly requiring them to register one or more Non-US De Minimis Dealers, including their main operating entities, in addition to SMBC-CM and MCMC, while allowing similarly situated firms who chose to register their head offices to continue without a change of course.

B. Discussion

SMBC and MHC support the CFTC's Final Order as an effective means of ensuring that non-US entities may continue with a modest amount of US-facing swap dealing activity while ensuring against widespread abuse by allowing significant portions of US-facing swap dealing activity to occur in a non-

regulated environment. SMBC and MHC B support the extension of the exemption from the aggregation rule that is contained in the CFTC's Final Order beyond July 12, 2013 when it is scheduled to expire.

On the other hand, we do not support the Proposed Aggregation Rule. Our main objection to the Proposed Aggregation Rule is that it would make the de minimis exception unavailable to firms who conduct US-facing swap dealing through a registered US swap dealer subsidiary. Specifically, because these firms have or plan to have in excess of USD 8 billion in annual aggregate gross notional of dealing activity in their registered US swap dealer subsidiaries, and since any non-US affiliate thereof would be required by the Proposed Aggregation Rule to aggregate activity of those subsidiaries with its own, the Proposed Aggregation Rule would require any Non-US De Minimis Dealer affiliated with these firms to register with the CFTC as a swap dealer.

Also, the CFTC has not clarified whether a person is considered to be engaged in swap dealing if it accommodates a counterparty's request to amend, terminate or novate a legacy swap. Consequently, because many legacy swaps remain outstanding, as noted above, any Non-US De Minimis Dealer currently operating under the Final Order would, under the Proposed Aggregation Rule, be required to register as a swap dealer unless each and every US person counterparty, except for those not involved with any dealing transactions, were to (i) novate or otherwise transfer their legacy swaps to a registered swap dealer subsidiary prior to the expiration of the Final Order or (ii) limit their activity with respect to legacy swaps to non-dealing activity following the expiration of the Final Order. In particular, many US end user counterparties to Non-US De Minimis Dealers may find themselves unable to negotiate for amendments, terminations or novations of legacy swaps, thereby essentially locking them into their pre-existing positions. We do not believe that this outcome was intended by the CFTC in proposing the Proposed Aggregation Rule, nor do we believe that registration of all entities which were relying on the de minimis exception is desirable or feasible.

Additionally, the Proposed Aggregation Rule would disfavor non-US based global financial firms that have chosen to register US subsidiaries as swap dealers. To comply with the Proposed Aggregation Rule, such firms would have to completely restructure their operations, while similarly situated firms who chose to register their foreign-based main corporate entity would not be required to restructure.¹ This is because the Proposed Aggregation Rule would not allow foreign-based groups to disregard the swap dealing activity of their registered US swap dealer subsidiaries, but would allow similarly situated foreign-based groups to exclude the swap dealing activity of their foreign-based registered swap dealers. Consequently, SMBC and MHC B would be forced to restructure their US-facing swap dealing operation, which could include, for example, de-registering their US swap dealer subsidiaries and/or registering another non-US entity as a swap dealer. This would place firms such as SMBC and MHC B at a competitive disadvantage inasmuch as they would bear a significant cost of restructuring, and it does not appear to be the CFTC's intention to favor some non-US based global financial firms over others.

Moreover, registering a US subsidiary results in certain benefits from the CFTC's perspective relative to registering a foreign affiliate, such as facilitating the CFTC's supervision and examination of the firm and mitigating the extent to which the CFTC's rules might conflict with foreign rules. Accordingly, we do not

¹ We note that registration of a US organized dealer was also consistent with the CFTC's initial Proposed Interpretative Guidance and Policy Statement concerning Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, 77 Fed. Reg. 41214, 41219-41220, July 12, 2012.

believe that the CFTC intended to adopt an interpretation of the aggregation rule that would discourage registering a US subsidiary.

Lastly, as noted above, the Further Proposed Guidance would not require a non-US person to aggregate the swap dealing activity of a non-US affiliate that is registered as a swap dealer, but would require a non-US person to aggregate the swap dealing activity of a US affiliate that is registered as a swap dealer. We do not believe such a distinction is necessary because the underlying policy reasons for not requiring aggregation with a registered swap dealer apply regardless of where the swap dealer is located.

Therefore, instead of requiring Non-US De Minimis Dealers to register as swap dealers because they must include the US-facing swap dealing activity of their registered US swap dealer subsidiaries in their de minimis calculation, and instead of disfavoring firms that choose to register US subsidiaries, SMBC and MHCBC request that the CFTC continue the approach to aggregation adopted by the Final Order. In addition, SMBC and MHCBC request that for non-US persons not previously engaged in US facing swap dealing activity, the CFTC exclude the swap dealing activities of any registered swap dealer, wherever located, from aggregation under the de minimis exception. We believe that this approach fulfills the CFTC's stated purpose of allowing limited US-facing swap dealing activity by affiliates without allowing the creation of new non-US affiliates to hold high risk trades with US persons.

Thank you for your consideration of this comment letter. We would be happy to further discuss any of the matters raised.

Regards,

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