

Bogotá D.C., February 6th, 2013

U.S. Commodity Futures Trade Commission
Secretary of the Commission
Three Lafayette Centre, 1155 21st Street NW.
Washington, DC

Ref. Comments on the Further Proposed Guidance Regarding Compliance with
Certain Swap Regulations (RIN 3038-AD85)

Dear Sirs,

By way of introduction, Brigard & Urrutia is one of the premier law firms in Colombia and the market leader advising local and international institutions in derivatives and structured products. In particular, we have been recently advising local financial institutions and the banking association regarding the impact of Title VII of Dodd-Frank Act and its implementing regulation for financial institutions in Colombia; most saliently, as to the regulations issued and proposed by the U.S. Commodity Futures Trade Commission (“CFTC”) and the Securities and Exchange Commission (“SEC”), requiring their registration as Swap Dealers or Major Swap Participants, or affecting the negotiation with registered Swap Dealers or Major Swap Participants.

In view of the Further Proposed Guidance Regarding Compliance with Certain Swap Regulations (“Further Proposed Guidance”), we note that, according to this regulation and the Final Exemptive Order Regarding Compliance with Certain Swap Regulations (“Final Exemptive Order”), the CFTC has proposed different alternatives towards the aggregation of affiliate’s swaps for purposes of the *de minimis* test. Pursuant to the Final Exemptive Order, a non-U.S. person would not be required to include in its determination of whether it exceeds the *de minimis* threshold, the following transactions:

1. The swap dealing transactions of any of its U.S. affiliates, and
2. In case the non-U.S. person is an affiliate of a registered Swap Dealer, the swap dealing transactions of any of its non-U.S. affiliates that engage in swap dealing activities, so long as such excluded affiliates are either engaged in swap dealing activities with U.S. persons as of December 21, 2012 or registered as a Swap Dealer.

However, through the Further Proposed Guidance, the CFTC also proposed an alternative interpretation for the aggregation requirement establishing that *“a non-U.S. person would be required, in determining whether its swap dealing transactions exceed the de minimis threshold, to include the aggregate notional value of swap dealing transactions entered into by all its affiliates under common control (i.e., both non-U.S. affiliates and U.S. affiliates), but would not be required to include in such determination the aggregate notional value of swap dealing transactions of any non-U.S. affiliate under common control that is registered as an SD.”*

We would like to respectfully propose an approach to this aggregation regulation with the aim to clarify that for purposes of the aggregation requirement, the following transactions should not be counted (please note that this approach will be similar to the relevant one under the Final Exemptive Order):

1. The swap dealing transactions of a U.S affiliate, regardless of whether or not it is registered as a Swap Dealer;
2. The swap dealing transactions of any of its non-U.S. and U.S. affiliates provided any of these are registered as a Swap Dealer.

Pursuant to the above, a non-U.S. person should not include in determining whether its swap dealing transactions exceed the *de minimis* threshold, the aggregate notional value of swap dealing transactions entered into by its affiliates, if at least one of them is registered as a Swap Dealer.

We appreciate your consideration to our abovementioned comments. Please kindly contact Carlos Fradique-Méndez, Brigard & Urrutia, cfradique@bu.com.co, (571) 3462011, with any questions about our comments.

Sincerely,

Brigard & Urrutia Abogados

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