

Bogotá D.C., February 6<sup>th</sup>, 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,

Asociación Bancaria y de Entidades Financieras de Colombia (hereinafter “Asobancaria”) is the local banking association whose members are the most representative local and foreign banks (through their local subsidiaries), financial corporations and public financial institutions in Colombia. Asobancaria promotes and generates actions towards the modernization and progress of the Colombian financial industry.

In view of the regulations issued and proposed by the U.S. Commodity Futures Trade Commission (“CFTC”) under Title VII of Dodd-Frank Act, Asobancaria has been working with the local industry with the purpose of analyzing the relevant impact of Dodd-Frank Act regulations for financial institutions in Colombia and in particular for local banks, whose main counterparties are U.S. banks and financial entities.

As a consequence of the analysis and discussion of the most recent regulations issued by the CFTC, specifically the Further Proposed Guidance Regarding Compliance with Certain Swap Regulations (“Further Proposed Guidance”), we have received several comments from local banks regarding the definition of U.S. Person for determining the entities swap dealing activity. In particular, we have some concerns regarding the “ownership” definition and its relevant scope.

Pursuant to the Further Proposed Guidance, we understand that the CFTC proposed an alternative interpretation regarding ownership that would consider as a U.S. person any entity “*if one or more of its U.S. majority owners has unlimited responsibility for losses of, or non performance by, the entity*”. However, we also understand that the proposed interpretation only excludes expressly, as non U.S. persons, legal entities such as limited liability companies and limited liability partnerships, where partners have limited liability<sup>1</sup>.

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<sup>1</sup>As per (ii)(B) of the Further Proposed Guidance: *(ii) A corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing, in each case that is either (A) organized or incorporated under the laws of a state or other jurisdiction in the United States or having its principal place of business in the United States or (B) directly or indirectly majority-owned by one or more persons described in prong (i) or (ii)(A) and in which such person(s) bears unlimited responsibility for the obligations and liabilities of the legal entity (other than a limited liability company or limited liability partnership where partners have limited liability);*

Under Colombian laws and regulations, there are various incorporation forms for legal entities where shareholders and quota holders have limited liability. Some of these entities can be assimilated to a limited liability company or a limited liability partnership but, most of them can be assimilated to corporations. In both cases, the owners have a limited responsibility in respect of the obligations and liabilities of the legal entity (i.e. the owners of the company are only responsible to pay their share of the equity).

Therefore, we would like to propose extending the alternative prong (ii)(B) to cover all type of legal entities that, under the laws of their country of incorporation, have a limited liability structure towards the obligations and legal responsibility of its owners, without restricting this prong to specific type of entities as it may lead to a confusion when determining the relevant entities for purposes of dealing activity.

We appreciate your consideration of our above mentioned comments. Please contact José Manuel Gomez, Legal VP Asobancaria, [jmgomez@asobancaria.com](mailto:jmgomez@asobancaria.com) (571 32666039), with any questions about our comments.

Sincerely,

**Asociación Bancaria y de Entidades Financieras de Colombia**