



P.O. Box 2600
Valley Forge, PA 19482-2600

(610) 669-1000
www.vanguard.com

July 2, 2013

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

Re: CFTC Final Exemptive Order Regarding Compliance With Certain Swap Regulations (RIN 3038-AD85) and U.S. Person Definition

Dear Ms. Jurgens,

Vanguard¹ appreciates the opportunity to provide the Commodity Futures Trading Commission (the “**Commission**”) with our support of the recent comment letter by the Asset Management Group of the Securities Industry and Financial Markets Association (“**SIFMA AMG**”) expressing concern with respect to the application of the Commission’s swap² regulatory regime to cross-border swap activities.³

As a part of the prudent management of our mutual funds and other portfolios, we enter into derivatives contracts, including swaps and futures, to achieve a number of benefits for our investors including hedging portfolio risk, lowering transaction costs, and achieving more favorable execution compared to traditional investments.

Vanguard is fully supportive of the mandate of the derivatives title of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Dodd-Frank Act**”) to bring much-needed transparency and regulation to the derivatives markets including subjecting derivatives to regulatory oversight and requiring the clearing of standardized swaps.

As explained in greater detail in the SIFMA AMG letter, we are concerned that by prematurely adopting an overly inclusive definition of U.S. Person, the Commission risks adopting vague criteria neither tailored to the actual market nor capable of implementation,

¹ Vanguard offers more than 170 U.S. mutual funds with total assets of more than \$2 trillion. We serve approximately 9 million shareholder accounts.

² For the purposes of this comment letter, “swaps” (as defined at Section 1(a)(47) of the Commodity Exchange Act (“**CEA**”) and “security-based swaps” (as defined at Section 3(a)(68) of the Securities Exchange Act of 1934) shall be referred to collectively “**swaps**”.

³ Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, 77 Fed. Reg. 41213 (Jul. 21, 2012), *available at* <http://www.cftc.gov/LawRegulation/DoddFrankAct/Dodd-FrankProposedRules/ssLINK/2012-16496a> ; Further Proposed Guidance Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 909 (Jan. 7, 2013), *available at* <http://www.cftc.gov/LawRegulation/DoddFrankAct/Dodd-FrankProposedRules/ssLINK/2012-31734a> (“**Proposed Guidance**”).

increases the likelihood of a conflict with other developing regulatory reforms both in the U.S. and in other jurisdictions, and limits the overall competitiveness of the U.S. swap markets.

While other U.S. and global regulators continue their already well-advanced efforts to develop similar reforms, the Commission should extend its Final Exemptive Order Regarding Compliance With Certain Swap Regulations (the “**Exemptive Order**”) to at least January 12, 2014. Such an extension would avoid the likely market confusion should non-U.S. organized participants be faced with adjusting their practices to conform to the Commission’s rules prior to the implementation of similar reforms in their home jurisdictions.

If the Commission is unwilling to extend the Exemptive Order, the definition of U.S. person must be tailored to achieve clear goals while avoiding a vague and overly broad scope that presents unintended, negative consequences to market participants. Vanguard is fully supportive of the proposed definition of U.S. person recommended by SIFMA AMG and drafted in response to a request by the Commission to capture appropriate entities while minimizing or avoiding unintended results. The keys to such a definition are the following considerations:

- **“Direct and significant connection in, or effect on, commerce in the United States”⁴**: establish risk-based thresholds beneath which non-U.S. organized entities will not be viewed as having the requisite connection to, or effect on, U.S. commerce;
- **Avoid assessment of indirect ownership of non-U.S. organized entities**: such assessments are not administratively practical, if even possible;
- **Exempt publically-offered non-U.S. organized funds**: such funds or collective investment vehicles publically offered to non-U.S. persons should be fully exempt;
- **Ignore the sponsor, promoter, operator or adviser of a fund**: while the entities and their investors are the proper targets, the location of a sponsor or adviser only leads to illogical conclusions potentially capturing funds with neither U.S. investors nor U.S. investments and creates competitive disadvantages based on sponsor or advisor location;
- **Apply an entity’s headquarters as its principle place of business**: while it is correct to capture non-fund entities headquartered in the U.S. but organized elsewhere, the focus should not be on the location of advisory services or solicitation, negotiation, execution or booking of trades if different from the headquarters;
- **Establish clear determination dates and compliance periods**: as relevant qualities may shift over time, limit the U.S. person determination to once each year and allow an adequate period to transition into compliance;
- **Incorporate Substituted Compliance**: acknowledge similar regulatory regimes by allowing substitute compliance where relevant with respect to the entity’s jurisdiction of incorporation or organization and, to allow for the development of such reforms, exempt non-U.S. organized entities from U.S. person status for at least one year (with EMIR deemed to satisfy such requirements for substituted compliance).

* * *

⁴ Section 2(i) of the Commodity Exchange Act.

Ms. Melissa Jurgens

July 2, 2013

Page 3

For these reasons, Vanguard joins with SIFMA AMG in recommending that the Commission extend the Exemptive Order, or, in the alternative if it is not willing to extend, adopt a U.S. person definition reflecting the above considerations. If you have any questions about Vanguard's comments or would like additional information, please contact William Thum, Principal, at (610) 503-9823 or Michael Drayo, Senior Counsel at (610) 669-4294.

Sincerely,

/s/ Tim Buckley

Managing Director
and Chief Investment Officer
Vanguard

/s/ John Hollyer

Principal and Head of Risk Management
Group
Vanguard

cc: Commodity Futures Trading Commission
The Honorable Gary Gensler
The Honorable Jill E. Sommers
The Honorable Bart Chilton
The Honorable Scott D. O'Malia
The Honorable Mark Wetjen