



STATE STREET

Stefan M. Gavell
Executive Vice President and Head of
Regulatory, Industry and Government Affairs

State Street Corporation
State Street Financial Center
One Lincoln Street
Boston, MA 02111-2900

Telephone: 617.664.8673
Facsimile: 617.664.4270
smgavell@statestreet.com

August 21, 2013

Via: <http://comments.cftc.gov>

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

Re: Exemptive Order Regarding Compliance with Certain Swap Regulations (RIN 3038-AE05) and Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations (RIN 3038- AD85)

Dear Ms. Jurgens:

State Street Corporation appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the “Commission”) with respect to: 1) the Commission’s Exemptive Order Regarding Compliance with Certain Swap Regulations, and 2) the Commission’s Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations (combined, the “Guidance”).¹

Combined, these two notices provide market participants with guidance on the Commission’s views regarding the cross-border application of the Commission’s rules implementing Title VII of the Dodd-Frank Act, which creates a new U.S. regulatory regime for swaps markets. While State Street agrees with commentary provided by industry groups on a broad range of cross-border issues, particularly the substantive challenges associated with the Commission’s new definition of “U.S. person,”² our

¹ Exemptive Order Regarding Compliance With Certain Swap Regulations, See 78 FR 43,785; Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, See 78 FR 45,292.

² August 12, 2013 letter from Securities Industry and Financial Markets Association, Futures Industry Association and Financial Services Roundtable.

comments today focus specifically on transition issues impacting non-U.S. branches of U.S. registered swap dealers.

Headquartered in Boston, Massachusetts, State Street specializes in providing institutional investors with investment servicing, investment management and investment research and trading. With \$25.7 trillion in assets under custody and administration and \$2.1 trillion in assets under management as of June 30, 2013, State Street operates in more than 100 geographic markets.

State Street's foreign exchange operates via full branches of State Street Bank and Trust Company in nine non-US locations: London, Montreal, Hong Kong, Beijing, Seoul, Singapore, Sydney, Tokyo and Taipei. These offices provide a range of foreign exchange and market research services to buy-side clients, including real money investment managers, hedge funds, central banks, sovereign wealth funds and insurance companies.

Our comments today address two broad issues.

First, the competitive impact on U.S. registered swap dealers operating abroad will be highly dependent on the Commission's process for making substituted compliance determinations. We urge the Commission to adopt a transparent, flexible approach to the substituted determination process.

Second, the Guidance provides insufficient time for market participants to adopt the many substantial changes to market practice mandated by the Commission. We urge the Commission to provide longer, more suitable phase-in periods, with respect to both substituted compliance and the new definition of "U.S. person."

Substituted Compliance Concerns

As a U.S. swap dealer trading with non-U.S. persons through non-U.S. branches, State Street has no objection to the Commission's application of entity-level requirements to our non-U.S. trading activity. We believe this approach is consistent with the requirement of the Dodd-Frank Act, which requires U.S. rules to apply to activities which have a "direct and significant connection with activities in, or effect on, commerce in the United States." We also support the Commission's determination to defer to local regulators, and generally not apply U.S. business conduct rules to transactions between a non-U.S. branch of a U.S. swap dealer and a non-U.S. person.

For other transaction-level requirements, while we support the concept of substituted compliance as outlined by the Commission, we remain concerned with how this concept will work in practice, and with the potential negative competitive impacts on U.S. swap dealers, particularly dealers in foreign exchange.

Our first concern relates to the process for reaching Commission determinations of substituted compliance. The Commission provides very little clarity into how this process will work. While we understand the sensitivity of such cross-border discussions, it is essential that the public, including regulated market participants, be provided transparency into the process, as well as the ability to

participate and provide formal input into regulatory discussions. The outcome of these substituted compliance discussions will have significant impacts on the ability of U.S. registered swap dealers to compete in these non-U.S. markets, and market participants should have a “seat at the table.”

Second, while we are encouraged by the Commission’s references to an “outcomes based” approach, and accept the Commission’s assurances that it will not insist on identical rules for markets deemed acceptable for substituted compliance, we remain concerned that the Commission will continue to insist upon a rule-by-rule analysis, creating the potential for substituted compliance determinations which might exclude certain key requirements, the imposition of which solely on U.S. based firms could have significant disadvantages.

For State Street’s foreign exchange only trading business, for example, we are concerned that the Commission may ultimately reach a determination that excludes the Commission’s documentation rules. To date, non-U.S. jurisdictions have not adopted documentation rules specifically analogous to those issued by the Commission. While some level of documentation (*e.g.* through ISDAs) may be in place due to previous market practice, it does not address all of the U.S. Dodd-Frank requirements.

Due to historical market practices based on the nature of foreign exchange trading, however, standard swaps trading documentation is not common for foreign exchange. Such trading is largely very short-term, and, in the case of State Street’s business, often with existing custodial clients, and so has not typically involved exchange of margin and the type of credit support or other agreements common in other swaps markets. Under the Commission’s guidance, the Commission’s documentation rule does not apply to U.S. registered non-U.S. swap dealers for trading with non-U.S. persons not guaranteed by, and not an Affiliate Conduit of, a U.S. person. The Commission’s documentation rule, of course, will also not apply to a foreign swap dealer not required to register with the Commission. As a result, a substituted compliance determination excluding documentation would mean that only U.S. swap dealers would be required to obtain full, CFTC- mandated documentation. In our experience, that requirement alone would be sufficient to shift many non-U.S. person counterparties away from trading with U.S.-based swap dealers, creating a significant competitive disadvantage for U.S.-based firms.

While we do not oppose requiring compliance, over time, with the Commission’s documentation rule for trading with non-U.S. persons out of a foreign branch of a U.S. swap dealer, State Street suggests the Commission adopt a phased, risk-based approach to addressing substituted compliance for documentation for foreign exchange trading relationships. Specifically, we suggest timing full compliance with the documentation rule in such circumstances to align with the effective dates of parallel regulatory mandates, such as collateralization or clearing, which will require industry-wide, greater use of ISDAs and credit support agreements for foreign exchange transactions. Adopting this approach will satisfy the Commission’s goal to address its Dodd-Frank Act mandate, while reducing the competitive disadvantage created for U.S. firms by imposing additional mandates solely on U.S. firms operating abroad.

In general, we urge the Commission to adopt a sufficiently flexible approach to substituted compliance to allow full substituted compliance determinations even in cases where, for example, a fully U.S. compliant documentation requirement is not in place, provided that the non-U.S. jurisdiction's overall regulatory approach is sufficiently protective to meet the Dodd-Frank Act's requirement to avoid "direct and significant impact" on U.S. commerce.

Transition and Timing Concerns

With respect to substituted compliance determinations, we are concerned that the December 21st date assumed by the Exemptive Order for completion of these complex international dialogues may be overly optimistic. While we are encouraged by Commissioner comments suggesting the December 21st expiration of temporary relief may be extended, if needed, we are concerned that lack of clarity in the Commission's intentions with respect to the deadline will, like previous deadlines, create market uncertainty, and put undue compliance burdens on U.S.-registered market participants. We urge the Commission to provide a clear statement to the public indicating that the December 21st deadline will be extended as needed to allow completion of the substituted compliance determination process in all six designated jurisdictions.

In addition, we urge the Commission to provide longer transition periods following substituted compliance determinations, both positive and negative. The Guidance provides a uniform 30-day phase-in period following any determination.

For negative or partial determinations, a 30-day phase-in period to apply U.S. rules to non-U.S. persons is unworkable. In the case of the U.S. documentation rules, for example, to the extent existing clients that are non-U.S. persons are willing to complete the documentation (as opposed to simply seeking new counterparties), we expect the documentation process to consume numerous months, at a minimum.

Positive determinations will also likely require longer than 30-day phase in requirements. We expect the Commission to impose various conditions or "means by which substituted compliance is achieved" on U.S. swap dealers availing themselves of substituted compliance, some of which may require interactions with either non-U.S. person counterparties, or foreign regulators. Additional compliance or reporting systems may also need to be developed. Any such interactions or systems developments will require more time than 30 days.

We urge the Commission to adopt a minimum transition period of 90 days for positive determinations, and 180 days for negative or partial determinations. In addition, the Commission should clarify that longer transition periods will be provided as appropriate.

Finally, on another matter, we are concerned with the extremely short transition period provided for adoption of the Commission's new definition of "U.S. person." The Commission has provided a 75-day transition period for application of this new definition, which adopts several novel concepts of "U.S. person," particularly related to fund structures. The process of evaluating this new definition, identifying counterparties that have been moved from being non-U.S. persons to U.S. persons, and onboarding these

counterparties as U.S. persons is time consuming and complex. We suggest the Commission adopt a two-phased approach, and require registered swap dealers to identify all U.S. persons under the new definition by December 21, 2013, then become fully compliant with U.S. rules for such counterparties by March 31, 2014.

Once again, thank you for providing State Street the opportunity to comment on the Commission's approach to cross-border application of the new U.S. swaps regulatory regime.

Please feel free to contact me should you wish to discuss State Street's submission in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Stefan M. Gavell". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stefan M. Gavell