Ref: GYG/44/H27
May 8, 2015

Comments on *"Initial Response to District Court Remand Order in Securities Industry and Financial Markets Association, et al. v. United States Commodity Futures Trading Commission"* issued by the Commodity Futures Trading Commission

Japanese Bankers Association

We, the Japanese Bankers Association ("JBA"), would like to express our gratitude for this opportunity to comment on the release: *"Initial Response to District Court Remand Order in Securities Industry and Financial Markets Association, et al. v. United States Commodity Futures Trading Commission"* (RIN 3038–AE27) issued on March 10, 2015 by the Commodity Futures Trading Commission (the "CFTC").

We respectfully expect that the following comments will contribute to your further discussion.

<General Comments>

Banks are faced with increasing costs for legal fees and external consulting fees in their efforts to accurately interpret and comply with the derivative rules under the Dodd-Frank Act. There still remain some areas with ambiguity in interpretation and thus banks have to manage their business in a conservative manner.

Further, amid global trend towards tightening financial regulation, banks have incurred costs in order to comply with multiple regulations where the timing of regulatory implementation or regulatory requirements, etc. differ across jurisdictions or where the comparability across jurisdictions is not established.

More specifically, the following three cases illustrated in (1) through (3) below and cases provided in Specific Comments section have caused additional costs and therefore, the CFTC is requested to give consideration to these matters.

<u>(1) Banks registered as Swap Dealers (SD)</u>

While it is relatively easy to perform the cost-benefit analysis for the Transaction-Level Requirements, such analysis for the Entity-Level Requirements would differ significantly depending on the situation of counterparty financial institutions.

For non-U.S. financial institutions, transactions covered by the Cross-Border Guidance (i.e. transactions with U.S. Persons) account for approximately 10% of their total transactions and the Entity-Level Requirements are applied to the remaining 90% (i.e. transactions with Non-U.S. Persons), incurring regulatory costs.

However, the CFTC's initial cost-benefit analysis does not seem to take into account such situation of non-U.S. financial institutions.

The CFTC therefore is requested to re-calculate benefits and costs after investigating the situation of transactions of non-U.S. financial institutions, or should exempt non-U.S. financial institutions from the Entity-Level Requirements (incl. to allow substituted compliance).

(2) Banks not registered as an SD

Transactions with U.S. Persons outside the U.S. are currently included in the scope of the extraterritorial application, and thus require considerable regulatory burdens. Therefore, banks have substantively suspended transactions with U.S. financial institutions and corporations outside the U.S., except for some exempted activities, undermining the convenience of their customers.

Further, banks have no choice but to avoid transactions with U.S. financial institutions, even though they are denominated in U.S. dollars, resulting in increasing risks and costs for maintaining market liquidity. Banks are also experiencing increasing costs in relation to transactions with U.S. corporations due to transferring trading locations and reporting on behalf of customers.

(3) U.S. subsidiaries registered as an SD

As subsidiaries locally incorporated in the U.S. are deemed as a U.S. Person/SD, customers tend to avoid transacting with these subsidiaries. In order to maintain business relationships, transactions with such customers need to be booked by Non-U.S. Persons, which is giving rise to costs.

<Specific Comments>

1. Transaction Data Reporting

In principle, OTC derivatives regulations of jurisdictions other than the U.S. are not applied across borders. Therefore, for U.S. Persons, there should be no particular problem to perform the cost-benefit analysis only in relation to their obligation to report transaction data to their home authority, i.e. the CFTC.

The CFTC's OTC derivatives regulations, on the other hand, are applied extraterritorially. Therefore, if Non-U.S. Persons, such as Japanese banks, execute cross-border transactions, they would need to report such transactions to their home authorities (i.e. FSA, in the case of Japan) and also certain transactions to the CFTC. Given this, the cost-benefit analysis on Non-U.S. Persons should reflect the fact that they will be subject to double regulations.

Further, transaction data reporting requirements differ across jurisdictions in terms of reporting data (elements and content), the definition of data elements and the due date of reporting.

Therefore, whenever a new rule becomes effective or there is any change to existing rules in each jurisdiction, banks will incur costs related to business processes and systems development to comply with such rules.

In this view, it would be necessary to establish a transaction data reporting process through an industry-wide initiative, such as developing rules for determining the reporting party.

Moreover, data collected in accordance with the transaction data reporting requirements are retained in fragments at multiple trade repositories, which are established in each host jurisdiction or for each product, based on inconsistent data architecture. As a result, it is difficult to obtain integrated data across products for the entire market. This raises a question as to whether benefits outweighing regulatory burdens are being realized. It is therefore necessary to reassess costs and benefits in this respect.

2. The Swaps Push-out Rule

Due to constraints on foreign banks caused by the swaps push-out rule, banks were forced to spin off its derivatives activities to its U.S. subsidiary, giving rise to considerable workload and costs for the transfer.

Since such spin-offs required explanations to customers and renewal of ISDA agreements, etc., it is considered that there has been a considerable burden on customers as well.

Further, subsidiaries to which the derivatives activities are transferred have been incurring increasing costs for regulatory compliance (e.g. investment and running cost) and are having difficulty in making profits because they cannot pass on such costs to customers.