RIN Number 3038-AE54

Jefferies

Jefferies LLC
520 Madison Avenue
16 Floor
New York, NY 10022
tel 212.284.2300
fax 646.786.5900
Jefferies.com

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Mr. Christopher Kirkpatrick
Secretary to the Commission
Commodity Futures Trading Commission
1155 21st Street, NW
Washington DC 20581

Re: Proposed Rules for Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants

Dear Mr. Kirkpatrick:

Jefferies Group LLC ("Jefferies") is submitting this letter in response to the proposed rulemaking of the Commodity Futures Trading Commission (the "Commission" or "CFTC") entitled "Cross-Border Application of the Registration Thresholds and External Business Conduct Standard Applicable to Swap Dealers and Major Swap Participants." (81 Federal Register 71946 (October 18, 2016).) Jefferies currently has two subsidiaries that are registered as swap dealers, Jefferies Financial Products LLC and Jefferies Financial Services, Inc.

Jefferies wishes in particular to respond to the Commission's requests for comments relating to the inclusion in the proposed rules (the "Proposed Rules") of provisions relating to any entity that is a Foreign Consolidated Subsidiary ("FCS"), namely a non-U.S. person in which an ultimate parent entity that is a U.S. person ("U.S. ultimate parent entity") has a controlling financial interest. We strongly object to the proposed requirement that swaps executed by or with an FCS must be counted for the purpose of determining swap dealer and major swap participant status because that requirement represents an unjustifiable expansion of the extraterritorial reach of the Dodd-Frank Act that will have an adverse effect on U.S. businesses.

Our objection is based on the following considerations:

1. The mere fact that the financials of a non-U.S. person may be consolidated into the financial statement of a U.S. parent company is not a sufficient nexus to subject that person or its counterparties to Dodd-Frank obligations. Section 2i of the Commodity Exchange Act expresses a Congressional intent to limit the reach of CFTC swap regulations to situations that have a direct and significant connection with activities in the United States or a direct and significant effect on the commerce of the United States. Such direct and significant connections can arguably can arise from swaps executed by a non-U.S. person whose swap obligations are guaranteed by a US person (most likely a parent company), and they are appropriately addressed in the Proposed Rules. However, that is simply not the case in respect of an FCS whose obligations are not supported by a guarantee. Absent a guarantee, the limited liability of corporate and individual shareholders in companies is generally recognized in all G20 countries and there is no evidence cited that routine swap activity by an FCS might result in overturning of such limitations for upstream U.S. companies in the same corporate group.

2. The requirement is overly broad because, as a practical matter, all non-U.S. subsidiaries are consolidated in the financials of a U.S. parent unless there is a specific accounting reason why consolidation should not occur. There is no distinction made based on the size or economic health of an FCS, factors which surely determine whether swap activities of the FCS could or might have an adverse effect on its parent. In addition, since it is highly unlikely that the swaps of any non-U.S. person would be guaranteed by an unrelated person, any guaranteed non-U.S. person is highly likely to also be an FCS, so the two different regulatory categories contemplated by the Proposed Rules will actually blend into a single category.

3. Forcing non-US persons executing swaps with an FCS to count such swaps for de minimis threshold purposes will adversely affect the competitiveness of the FCS in international swap markets. We believe this will be the case because of the shunning of guaranteed non-U.S. affiliates of U.S. persons that took place as a business matter following the issuance of the CFTC "Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292 (Jul. 26, 2013) (the "2013 Guidance"). Non-U.S. persons that are not affiliated with a U.S. person have demonstrated by their behavior in the recent past that they wish to avoid entanglement with CFTC swap rules if at all possible even if the only entanglement initially is the obligation to count swap activity toward the de minimis swap dealer registration threshold.

4. Market participants like the two Jefferies swap dealers have spent considerable management time, and incurred significant expense, in setting up compliance programs and systems based on the premise that FCSs were completely exempt from regulation under the 2013 Guidance. The radically different treatment of FCSs under the Proposed Rules will require additional compliance effort and expense. If you retain the FCS provisions in the final version of the Proposed Rules, you should at a minimum allow a lengthy period after the effective date of that version before compliance with the FCS provisions becomes mandatory.

We also endorse the comments concerning the treatment of FCS made in the comment letters submitted concerning the Proposed Rules by the International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association.

Thank you again for the opportunity to submit these comments. If any member of the

Commission or its staff has any questions concerning our comments, please feel free to contact me at 212-707-6409.

Respectfully submitted,

Michael Sharp
General Counsel

cc: Honorable Timothy G. Massad, Chairman
Honorable J. Christopher Giancarlo, Commissioner
Honorable Sharon Y. Bowen, Commissioner

Eileen T. Flaherty, Director
Division of Swap Dealer and Intermediary Oversight