

December 20, 2016

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants (RIN 3038-AE54)

Dear Mr. Kirkpatrick:

The Wholesale Markets Brokers' Association, Americas ("WMBAA")¹ appreciates the opportunity to provide comments to the Commodity Futures Trading Commission's ("Commission") proposed rules and interpretations ("Proposed Rule")² related to the crossborder application of the registration thresholds and external business conduct standards for swap dealers and major swap participants, including the extent to which they would apply to swap transactions that are arranged, negotiated, or executed using personnel located in the United States. Each of the WMBAA member firms operates a Commission-registered swap execution facility ("SEF") as well as other trading venues for a variety of financial products around the world.

Ever since the initial staff advisory's publication in 2013,³ as well as then-Chairman Gensler's introduction of policy's principles at the WMBAA's "SEFCON" event,⁴ the WMBAA has always supported clear and practical guidance related to the cross-border application of the Commission's rules and regulations. Even before Congress, the WMBAA has advocated "a globally coordinated approach" "so as to not fragment markets, reduce liquidity, and increase costs to users by rupturing the existing methods by which US and non-US swap dealers, international banks, global asset managers, and end-users access competitive, transparent OTC markets in the US or in other jurisdictions."⁵

¹ The WMBAA is an independent industry body representing the largest inter-dealer brokers. The founding members of the group—BGC Partners, GFI Group, Tradition, and Tullett Prebon—operate globally, including in the North American wholesale markets, in a broad range of financial products, and have received temporary registration as swap execution facilities. The WMBAA membership collectively employs approximately 4,000 people in the United States; not only in New York City, but in Stamford and Norwalk, Connecticut; Chicago, Illinois; Jersey City and Piscataway, New Jersey; Raleigh, North Carolina; Juno Beach, Florida; Burlington, Massachusetts; and Dallas, Houston, and Sugar Land, Texas. For more information, please see www.wmbaa.com.

² Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants, 81 Fed. Reg. 71946 (Oct. 18, 2016).

³ Applicability of Transaction-Level Requirements to Activity in the United States (Nov. 14, 2013) *available at* <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/13-69.pdf>. [hereinafter "Staff Guidance"]

⁴ See Remarks of Chairman Gary Gensler at Swap Execution Facility Conference: Bringing Transparency and Access to Markets (Nov. 18, 2013), *available at* <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-152>.

⁵ See testimony of Stephen Merkel, Executive Vice President, General Counsel, and Secretary, BGC Partners, Inc., on behalf of the WMBAA, before the House Subcommittee on Commodity Exchanges, Energy, and Credit (June 14, 2016), *available at* https://agriculture.house.gov/uploadedfiles/merkel_testimony.pdf.

As the WMBAA has previously remarked,⁶ the Staff Guidance, and as set forth in the Proposed Rules, provides explicit guidance for swap dealers and major swap participants. The Commission has not addressed the treatment of platforms or introducing brokers who interact with non-US swap dealers located in the US, adding to the uncertainty around the implementation of the CFTC's rules. The WMBAA, as operators of global trading platforms, has observed inconsistent application of the CFTC's rules by market participants depending on a number of jurisdictional factors, including the role of third parties to foster liquidity and facilitate the matching of counterparties for swaps transactions.

Much like the provisions set forth in the Proposed Rules, the WMBAA encourages the Commission to address, through an Administrative Procedure Act compliant process that solicits public notice and comment, the role of trading venues and introducing brokers for cross-border jurisdictional purposes, much like it has done in this instance for swap dealers and major swap participants.

Similarly, the WMBAA encourages the Commission's careful consideration of a foreignequivalency or substituted compliance regime for non-US trade execution venues, such as the establishment of an exempt SEF category, to prevent further fracturing of markets by jurisdiction.

Finally, the Commission should work with foreign regulators to ensure they have a reciprocity provision for US-registered SEFs. Any such CFTC rulemaking for exempt SEFs should condition the relief for the foreign multilateral trading facility on the existence of a reciprocity provision in law or regulation of the applicable foreign jurisdiction.

The WMBAA appreciates the Commission's consideration of these comments and would be pleased to discuss this request in further detail.

Sincerely,



Scott Fitzpatrick
Chairman, WMBAA

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

⁶ See letter from William Shields, Chairman, WMBAA, to the Honorable Timothy Massad, Chairman, CFTC regarding Swap Execution Facility Regulations, Made Available to Trade Determinations, and Swap Trading Requirements (March 11, 2016), available at http://www.wmbaa.com/wp-content/uploads/2016/06/WMBAA_Letter_to_CFTC_031116.pdf.