September 30, 2017

By electronic submission to projectkiss@cftc.gov

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Commodity Futures Trading Commission's Request for Public Input on Simplifying Rules, Project KISS, in RIN 3038-AE55:

Ladies and Gentlemen:

Credit Suisse Holdings USA and its affiliates ("Credit Suisse") appreciates the opportunity to provide the Commodity Futures Trading Commission ("CFTC" or "Commission") and its staff with our suggestions in response to Project KISS, as to "how the Commission's existing rules, regulations or practices could be applied in a simpler, less burdensome, and less costly manner."[1]

We note that Credit Suisse has actively participated in the KISS submissions put forth by Institute of International Bankers ("IIB"), Securities Industry and Financial Markets Association ("SIFMA"), the Futures Institute Association ("FIA")[2] and the International Swaps and Derivatives Association ("ISDA"). We fully agree with recommendations made in each of the aforementioned comments and wanted to take the opportunity to again highlight those that are most important to our firm.

Our comments focus on the Commission's over-the-counter ("OTC") swaps rules pursuant to Title VII of the Dodd-Frank Act and how they apply to swap dealers affiliated with a foreign bank, like Our comments focus on the Commission's over-the-counter (OTC) swaps rules pursuant to Title VII of the Dodd Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank") and how they apply to swap dealers affiliated with a foreign bank, like Credit Suisse, that operates in more than 50 countries worldwide and relies on important global business and trading strategies in order to best serve clients. Given our global footprint, the extraterritorial application of CFTC's OTC rules has been a leading priority (and concern) at Credit Suisse.

[1] See Project KISS Request for Information, 82 Fed. Reg. 21494, RIN3038-AE55 (published on May 9, 2017); and Correction thereto, 82 Fed. Reg. 23765 at 23765, RIN 3038-AE55 (published on May 24, 2017)

[2] Credit Suisse's FCM-specific concerns related to the futures, options, and centrally cleared derivatives markets are discussed at length in the FIA comment file. This submission represents the CS Broker Dealer perspective more broadly as it relates to the application of Title VII over the counter (OTC) swaps rules.

Credit Suisse, that operates in more than 50 countries worldwide and relies on important global business and trading strategies in order to best serve clients. Given our global footprint, the extraterritorial application of CFTC's OTC rules has been a leading priority (and concern) at Credit Suisse.

Credit Suisse fully agrees with Chairman Giancarlo's recent comments at the Eurofi Financial Forum stating that "regulators must take a cooperative and global approach to pursuing market integrity and customer protection. And, we must keep in mind that competition, growth, and innovation are stifled if we impose piecemeal or inconsistent regulatory requirements"[3] To date, international cooperation has not been a meaningful part of new rule writing. In addition to international cooperation, there is more that could be done within the confines of our own borders.

It has been more than four years since the CFTC published its Interpretative Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations and its Exemptive Order Regarding Compliance with Certain Swap Regulations ("Cross Border Guidance") In that time, global banks like Credit Suisse have implemented the Commissions rulemakings and experienced firsthand how the existing Title VII regulations impact cross-border swap trading activities, often in a needlessly complex and onerous manner. In particular, the lack of comparability determinations and inability to rely on a meaningful substituted compliance framework has created significant operational complexities and legal uncertainties. The lack of adequate cross border rules has created risks for global markets and regulators who oversee them.

We applaud the Commission's efforts to launch Project KISS and appreciate the opportunity to provide input on how to clarify and simplify the extraterritorial application of the aforementioned rulemakings. Streamlining the approach will encourage more trading and new investment in the United States and promote U.S. access to integrated, global markets.

We believe there are a number of regulatory steps that the CFTC can take to meet the objectives outlines in the Project KISS solicitation. These include the following changes that we discuss in this letter:

- Addressing competitive disparities and promoting new investments from foreign firms in the U.S. by adopting meaningful substituted compliance for countries that adhere to the Pittsburgh G-20 Leaders Summit, September 2009 ("G-20") G-20 and Basel Committee on Banking Supervision (BCBS) and International Organization of Securities Commissions (IOSCO) Principles.

- Rebalancing the extraterritorial approach as set forth in Section 2(i) of the Commodities Exchange Act ("CEA"), as amended by the Dodd-Frank Act, which states that CFTC rules may apply to swap activities outside the United States only if those activities have a direct and significant connection with activities in, or effect on, commerce of the United States.

- Recalibrating uncleared margin requirements – methodologies prescribed for calculating counterparty risk assume that initial and variation margin are the only fail-safes protecting

[3] Remarks of CFTC Chairman J. Christopher Giancarlo before the Eurofi Financial Forum. "Future of CFTC-EU Regulatory Coordination in the Financial Sector." Tallinn, Estonia (September 14, 2017) Full Remarks Here: http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-28

counterparties in the course of an OTC swaps transaction. The reality is that margin is but one of many new safety buffers created under Dodd-Frank.

- Harmonizing CFTC, Securities and Exchange Commission ("SEC") and prudential regulator's OTC swap rules – key concepts in U.S. swaps rules, including the definition of a "U.S. Person" and other entities brought into scope should be as consistent as possible to eliminate operational inefficiencies (e.g., same reporting or reconciliation fields) and unnecessary burdens on swap markets participants (e.g., consistent business conduct rules to allow single set of documentation).

We thank the CFTC for its considerations of our comments. If you have any questions, please do not hesitate to contact the undersigned or any of the following: Joseph Seidel (joseph.seidel@credit-suisse.com) or Maggie Gage (Margaret.gage@credit-suisse.com)

Warm Regards,

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Eric Varvel
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I. Address Substituted Compliance and Adopt a Robust Outcomes-Based Approach

- **U.S. regulators committed to take an outcomes-based approach to substituted compliance where foreign regulations are comparable, including where rules may be similar but not identical to U.S. rules.[4] To date, this commitment has not been met.**

In many cases, U.S. regulators have yet to make comparability determinations that would provide a path to substituted compliance. In instances where they have tried, the approach taken has been a rule-by-rule comparison, rather than an outcome-based methodology.

One example is the 2016 negotiation to achieve a "common approach" to the regulation of central counterparties (CCPs). Even as the European Union (EU) and CFTC agreed on a regulatory CCP framework, the CFTC added into its final documents that it would implement a substituted compliance regime whereby EU CCPs could satisfy "a majority of" U.S. rules by complying with the EU regime[5]. No further clarity was offered and, as a result, there is uncertainty risk for market participants as to which standards the US regulators may deem comparable and which they may not.

An outcome- based review would provide markets with certainty and encourage global clearing. In the present circumstances, market participants are in the uncertain position of needing to abide by both sets of rules put forth in the EU and U.S.

We agree that it is important that the CFTC have a process to ensure that foreign rules achieve the same regulatory objectives as the Commission's rules. This was precisely the purpose of building international standards from the onset so that international regulators could adopt rules whereby the letter of the law meets the local, regional requirement and the spirit of the law meets international obligations. In evaluating whether substituted compliance should be permitted, U.S. regulators should look to whether foreign rules meet international regulatory standards.

A. Margin Rules: A Test Case for Outcomes-Based Substituted Compliance

Another example of an unworkable approach to substituted compliance is one that is raised in other comment letters regarding the U.S. review of Japanese margin rules. In that review, the CFTC used an eleven-element test to compare the two regimes.[6] The CFTC ultimately found comparability for eight of the elements, and dismissed the remaining three (treatment of inter-affiliate margin and the scope of the definitions for products and entities covered by Japanese rules). This "strictest-rule-applies" approach results in treating cross-border transactions more harshly than domestic transactions and discourages cross-border trading activities that contribute to liquidity in U.S. markets.

[4] July 2013 Cross-Border Guidance, 78 Fed. Reg. at 45342 (the "CFTC Cross Border Guidance").

[5] Sullivan & Cromwell LLP. CFTC and European Commission CCP Agreement- CFTC Chairman Massad and Commissioner Hill Agree to Common Approach Regarding Requirements for CCPs. February 11, 2016

[6] 81 Fed. Reg. 63376 (Sept. 15, 2016).

We request that the Commission focus on achieving meaningful substituted compliance with other jurisdictions adopting BCBS-IOSCO margin rules. As numerous jurisdictions around the world have implemented margin rules under the framework of a common set of BCBS IOSCO requirements, it stands to reason that uncleared swaps margin should be the test case for global regulatory harmonization. If global regulators are unable to quickly achieve mutual recognition and substituted compliance under the BCBS-IOSCO margin framework, then it would suggest that the idea of global regulatory harmonization is unachievable in practice with respect to any other body of financial regulation that did not benefit from implementation under a common framework.

Proposal: Address Competitive Disparities and Promote New Investments from Foreign Firms in the U.S. by Adopting Meaningful Substituted Compliance for Countries that Adhere to G-20 Principles

The Commission should return to the outcomes-based approach that it set forth in the Cross-Border Guidance. An outcomes-based approach is consistent with the Commission's statutory mandate under CEA Section 2(i) to apply Commission regulations extraterritorially only where necessary to mitigate "direct and significant" risk to the United States. Unless stricter-rule-applies conditions are necessary to mitigate a direct and significant risk, they should not apply.

Margin rules should be the test case. Many BCBS-IOSCO compliant jurisdictions from around the world have margin rules in place. A holistic, outcomes-based substituted compliance framework should be achievable for this set of rules.

II. The CFTC's current extraterritorial approach is extremely broad and, in some instances, may reach beyond a solid statutory foundation

- **Final CFTC rules capture transactions that should fall outside of the U.S. regulatory scope. Across the board, overly broad regulations discourage well-capitalized, foreign swaps dealers, like Credit Suisse, from growing their business in the U.S.**

Significant amounts of potential U.S. derivatives lending and hedging businesses are being kept off shore due in part to the current extraterritorial application of CFTC swap rules, which oversteps regulatory boundaries and often legally conflicts with rules of foreign jurisdictions.

As mentioned above, CEA Section 2(i), as amended by Dodd-Frank, provides that the Commission's swap authority "shall not apply" to activities outside the United States unless those activities "have a direct and significant connection with activities in, or effect on, commerce of the United States . . . "[7] We believe that this provision is intended to act as a distinct limitation on the Commission's authority outside of the U.S. and therefore the Commission must properly articulate when and how the "direct and significant" standard is met. If the standard is met, then the Commission can better justify the application of its rules to swap activities that take place outside of the United States.

[7] Commodities Exchange Act (7 U.S.C. § 2(i)(1).)

The CFTC Cross Border Guidance failed to take this directive into account.[8] Instead, the Commission seemingly treated CEA Section 2(i) as a tool to expand their jurisdiction, often without justification. In particular, the CFTC never defined or standardized the "direct and significant" test that was used to support the application of its rules outside the borders of the United States, a practice that has previously been rejected by the courts as a violation of the Administrative Procedures Act ("APA").[9]

Without a standardized application of the test, the CFTC often uses CEA Section 2(i) authority inconsistently and arbitrarily across rule sets and captures transactions that should fall outside the scope of the Commission's mandate.

A. Reporting

For instance, under the CFTC's reporting requirements, if a non-U.S. Swap Dealer is registered with the CFTC because it enters into swaps with U.S. Persons, it also becomes subject to large trader reporting requirements. Such swaps have limited U.S. nexus, do not increase credit risk in U.S. markets, are already regulated locally, and may violate foreign privacy laws if reported across borders. We believe this is an overstep of CEA Section 2(i) authority.

In addition to a regulatory overstep, the reporting rules also represent an example of inconsistent application of CEA Section 2(i) authority. The CFTC Cross Border Guidance classifies real-time reporting as a 'transaction' level rule and allows non-U.S. Swap Dealers to utilize substituted compliance to limit their CFTC Part 43 reporting only to swaps with US Persons. However, a final substituted compliance determination has not yet been made for non-U.S. Swap Dealers reporting of swaps facing non-U.S. Persons to a registered swap data repository ("SDR") under Parts 45 and 46 of the CFTC rules.

This is counterintuitive, and we encourage the CFTC to immediately grant substituted compliance consistently to all forms of swap reporting and to limit a non-U.S. Swap Dealer's reporting responsibilities only to trades facing U.S. Person entities. This clarity is especially relevant for non-U.S. Swap Dealers given the ongoing implementation of G-20 derivative reform commitments around the globe, which has resulted in new trade reporting obligations in the EU, Switzerland and Asia Pacific countries.

Credit Suisse supports greater transparency into OTC derivative markets via enhanced trade reporting, but believes overlapping requirements are costly, unnecessarily complicated and represent unwarranted cross-border overreach. We believe the Commission should continue to work with regulators in other jurisdictions to develop a secure framework which allows for direct access and/or the sharing of relevant swap data across and between foreign trade repositories. This will allow regulators to have direct access to relevant data whether substituted compliance is available or not, while also limiting the duplicative compliance burden on swap dealers.

[8] July 2013 Cross-Border Guidance; Comparability Determinations; CFTC Rule 23.160

[9] See Appalachian Power Co. v. Envtl. Prot. Agency, 208 F.3d 1015, 1027 (D.C. Cir. 2000) (vacating agency guidance interpreting statutory language with practical binding effect because it did not define subparts of the interpreted term and should have been promulgated as a legislative rule under the APA).

Proposal: Foreign Dealers' Swaps with a Non-U.S. Counterparty Should Not Be Subject to U.S. Reporting Requirements

To date, the CFTC has granted temporary and limited relief from these reporting rules. The CFTC should expand the relief to cover all foreign swap dealers and make it permanent. The CFTC should work with the SEC to help ensure that they follow suit.

III. Recalibrating OTC Margin Requirements for Liquidity Impact

- OTC initial margin requirements for uncleared swaps should be reviewed on the whole with respect to liquidity and other impacts.

A. Review Onerous OTC Initial Margin Requirements

Key Principle 2 of the internationally agreed to Bank for International Settlements (BIS) and IOSCO Margin Requirements for OTC Derivatives states that "All covered entities that engage in non-centrally cleared derivatives must exchange initial and variation margin as appropriate to the counterparty risks posed by such transactions"[10] However, methodologies prescribed by U.S. regulators for calculating counterparty risk assume that initial and variation margin are the only protections for a counterparty in the course of that transaction. The reality is that margin is but one of many new safety buffers created under various Dodd Frank regulations.

For many of the largest swap participants, there are a plethora rules and regulations that apply to their swaps businesses, including Basel requirements as implemented by the relevant national supervisors, such as: Total Loss Absorbing Capital ("TLAC"), "Too Big To Fail" ("TBTF") rules, Comprehensive Capital Analysis Review ("CCAR"), Net Stable Funding Ratio ("NSFR"), Liquidity Coverage Ratio ("LCR"), Supplemental Leverage Ratio ("SLR"), and Fundamental Review of the Trading Book ("FRTB"). Margin rules should be viewed as complimentary to each of these regulations and standards should be recalibrated so that they accurately safeguard risks in a balanced system with post-crisis capital and liquidity safeguards. Accordingly, we believe there should be a review of the margin regulations for their adverse liquidity impacts, as those liquidity impacts introduce new systemic risk.

a. Segregation

First, the obligation to post segregated initial margin is unnecessary for safety and soundness, and in fact, exposes the covered swap entities to liquidity risk by tying up unnecessary capital for the benefit of other unregulated entities. This approach of requiring capital to be dispensed to third parties is contrary to the long-standing U.S. policy for regulating financial intermediaries that focuses

[10] Basel Committee on Banking Supervisions and Board of the International Organization of Securities Commissions. Margin requirements for non-centrally cleared derivatives. September 2013. Part B: Key principles and requirements. Page 8.

on ensuring that adequate capital and margining be brought into and kept at the regulated market intermediary to support its viability and solvency.

b. Margin Calculations Too High

Second, initial margin requirements are too high. The 10 day liquidation horizon required of initial margin models for calculating the initial margin requirement is arbitrary and often does not reflect the actual time horizon to replace the swap, even in times of financial distress. We propose that the time horizon be tailored for the asset class, or better yet, for the specific product, based on its actual liquidity profile. Likewise, the initial margin amounts required by grid calculations are much too punitive. Many products are not currently covered by the ISDA Standard Initial Margin Model (SIMM), and the grid calculation would make those products fundamentally uneconomic for swap dealers to trade, thereby reducing or eliminating liquidity for those products.

c. Cross-Product and Portfolio Margining

Third, another way to reduce the negative liquidity impact of the margin rules is to permit cross-product and portfolio margining within a single legal entity. This will necessitate coordination with other regulatory agencies, and should be made a priority in order to reduce the unnecessary burden and liquidity impact of the margin requirements.

d. Treatment of Special Purpose Vehicles

Finally, we request that securitization, repackaging and other asset-based structured finance transactions that use non-recourse special purpose vehicles ("SPV") receive an exemption from the margin requirements for uncleared swaps, so long as these transactions adequately collateralize the swap counterparty by a senior placement in priority of payments. By comparison, EU margin rules allow for those SPVs that qualify as a Non-Financial Counterparty ("NFC") to be exempt from margin requirements. We recommend expanding the end user exemption to permit such SPVs to be exempt from margin requirements in a manner that would harmonize the swap dealer exemption for such SPV transactions with those available in the EU.

B. Inter-Affiliate Initial Margin

We applaud the Commission's recent actions to exempt inter-affiliate swaps from initial margin requirements. In doing so, the CFTC recognized that inter-affiliate swaps are vital risk management tools that do not add to the net risk of the consolidated group,[11] which is precisely why the CFTC initially deemed that inter-affiliate swaps do not count against firm's de minimis threshold for triggering swap dealer registration and also exempted them from the swap clearing mandate.

[11] See statement of support from CFTC Chairman Gary Gensler regarding final rules to exempt certain inter-affiliate swaps from mandatory clearing requirements (available at: http://www.cftc.gov/PressRoom/SpeechesTestimony/genslerstatement040113). Also see statements regarding the treatment of inter-affiliate transactions in the CFTC's final rules on margin requirements for uncleared swaps from CFTC Chairman Timothy Massad (available at: http://www.cftc.gov/PressRoom/SpeechesTestimony/massadstatement121615d) and then Commissioner, now Chairman J. Christopher Giancarlo (available at: http://www.cftc.gov/PressRoom/SpeechesTestimony/giancarlostatement121615b).

However, the CFTC Interaffiliate exemptions, as currently drafted contain conditions that have proven problematic in certain instances for global dealers registered with the Commission that transact with their U.S. affiliates. For example, the Commission requires that affiliates relying on these exemptions collect initial margin or centrally clear their swaps with third parties, even in non-U.S. jurisdictions where Title VII's cross-border framework would not otherwise require them to do so. Inter-affiliate swaps should be exempt from initial margin, mandatory clearing and mandatory trading requirements, so long as these transactions are: reported to a SDR; centrally risk managed; and subject to the exchange of variation margin. We note that records of all of these swaps are maintained and can be requested in accordance with CFTC regulations. Therefore an unconditional exemption would not impact the Commission's ability to address transactions that are structured to evade Title VII rules

Proposal: Uncleared Initial Margin Requirements Should be Reviewed on the Whole for Liquidity Impacts

Efforts to create stronger capital and Too Big to Fail ("TBTF") reforms have occurred separately from the work on derivatives markets and new margin rules. We suggest that the interaction of these reforms now allows a much simpler approach to be taken in certain areas, like the amount of initial margin required to be collected for swaps. For this reason, the costs and benefits of Dodd-Frank imposed margin requirements, particularly with respect to initial margin, should be reviewed.

The 10-day liquidity time horizon should be tailored for the asset class, or better yet, for the specific product, based on its actual liquidity profile.

Initial margin amounts required by grid calculations should be reviewed for liquidity impacts. There are a number of products not covered by SIMM that must rely on the grid. Grid calculations make the products fundamentally uneconomic for swap dealers to trade, thereby reducing or eliminating liquidity for those products.

Permit cross-product and portfolio margining within a single legal entity. While this will necessitate coordination with other regulatory agencies, it should be made a priority in order to reduce the unnecessary burden and liquidity impact of the margin requirements.

Securitization, repackaging and other asset-based, non-recourse financing vehicles should be given an exemption from the margin requirements to harmonize with the NFC-exception available under EU and other foreign margin rules.

Proposal: Eliminate Conditions on the Inter-affiliate Swap Exemptions from OTC Initial Margin

Inter-affiliate swaps should be fully exempt, without condition, from CFTC initial margin, mandatory clearing and mandatory trading requirements, so long as these transactions are: reported to a swap data repository; centrally risk-managed; and subject to the exchange of variation margin.

IV. Harmonization of CFTC and SEC Final OTC Swaps Rules

- Key concepts in U.S. swaps rules, including the definition of a "U.S. person" and other entities brought into scope should be consistent across U.S. agencies regulating derivatives. CFTC and SEC swap rules should be as consistent as possible to eliminate operational inefficiencies (e.g., same reporting or reconciliation fields), legal uncertainty and unnecessary and costly burdens on swap market participants (e.g., consistent business conduct rules to allow a single set of documentation).

A. Harmonize Definitions

Within the Commission's own Title VII rules, there are now two different sets of "U.S. person" and "guarantee" definitions. One appears in the CFTC Cross-Border Guidance and the other is in the Commission's margin rules for uncleared swaps. The SEC has adopted slightly different definitions for purposes of its Title VII rules for security-based swaps, as have the prudential regulators for purposes of their Title VII margin rules for uncleared swaps and security-based swaps. These different definitions bring certain counterparties in-scope for purposes of some rules but not others, which increases the costs and risks of error in connection with market participants' systems, controls, and documentation. On the other hand, the policy objectives underlying the relevant rules do not vary in respects that justify these different definitions.[12]

B. Harmonize Registration Rules: Do Not Require SEC-Style Certification and Legal Opinion of Non-Resident Dealers

In their final registration rules, the SEC adopted certification and legal opinion requirements applicable to security-based swap dealers that are incorporated or have a principal place of business outside the U.S. (a "non-resident SBSD"). Their rule[13] provides that when registering with the SEC, a registrant must certify that it can, as a matter of law, and will (i) provide prompt access to its books and records and (ii) submit to onsite inspection and examination. Non-resident SBSD applicants must also provide the SEC with an opinion of counsel regarding these matters.

We believe this is inconsistent with the objective of fostering a level competitive playing field amongst swap dealers, and encourage the CFTC not to adopt a similar approach. Additionally, we have requested SEC staff to clarify that the certification and opinion are solely meant to cover:

- Access to the non-resident SBSD's U.S.-related swap records and, for a nonresident SBSD subject to Commission capital and margin regulation, financial records
- Submission to onsite Commission inspection and examination of: (i) any books and records located at a U.S. branch or office of the non-resident SBSD; and (ii) U.S.-related records located at the non-resident SBSD's U.S.-related foreign locations.

[12] In contrast, we believe it remains appropriate, as a policy and statutory matter, for the Commission not to apply its Title VII definitions to its futures-related rules.

[13] SEC 17 CFR Parts 240 and 249. Release No. 34-75611; File No. S7-40-11. RIN 3235-AL05. Registration Process For Security-Based Swap Dealers (SEC Rule 15Fb2-4(c))

This SEC rule has given pause to foreign firms considering on-shore shore security-based swap business subject to SEC regulations U.S. Regulators should not have unfettered access to examine foreign firms' business activities that are unrelated to U.S.-regulated swap positions.

C. Arrange Negotiate and Execute ("ANE") Standard

We support the CFTC's position not to apply an ANE test to the de minimis calculation for swap dealer registration for non-U.S. persons. Further, we also support the Commission's position that an ANE test should apply only to limited set of external business conduct rules (e.g. anti-fraud[14] & fair dealing[15]). Nonetheless, we remain concerned that certain CFTC rules, such as the proposed Cross Border Guidance, leave open the question that there may be "financial contagion" risk in ANE transactions.

To encourage foreign firms to grow and, as a result, create jobs in the U.S. and to promote global market liquidity, U.S. swaps rules should not apply to a swap between two foreign entities merely because U.S.-located personnel arrange, negotiate or execute the swap. The mere participation of a U.S. person in a foreign transaction introduces little to no new risk to the U.S. and certainly not enough risk to justify the immense cost of imposing U.S. swap rules on these otherwise non-U.S. swaps.

We appreciate that ANE transactions may raise certain customer protection and market transparency concerns; however the "financial contagion" risk, which has been raised to support the rational for perhaps including an ANE test, is negligible to nonexistent. The risk associated with an ANE transaction remains offshore. Any entity that might look to onshore a concerning level of risk in the U.S. would be captured by rules applicable to Foreign Consolidated Subsidiaries ("FCSs"), which would require such entities to abide by applicable U.S. swaps rule. For these reasons, which largely align with the CFTC's rationale for excluding ANE trades for de minimis counting, we believe that an ANE test is not necessary to combat risk in U.S. markets.

Finally, we note that while the CFTC has made the important distinction that ANE should be limited in application only to conduct-related requirements, but not be applied to risk-related requirements and that ANE should be excluded from de minimis counting, the SEC has not yet aligned its view with this position.

As the CFTC works with the SEC to achieved harmonized rules, we encourage the Commission to highlight this issue.

D. Harmonize Exemptions for Inter-Affiliate Swaps from Initial Margin, Clearing and Trading Rules

As previously discussed, we appreciate recent steps taken by the Commission to acknowledge the rationale for exempting inter-affiliate swaps from certain regulatory obligations. In addition to the suggestions presented above, namely to remove problematic conditions on the exemptions for

[14] Title 17, Chapter 1, Part 23, Subpart H §23.410 Prohibition on fraud, manipulation, and other abusive practices.

[15] Title 17, Chapter 1, Part 23, Subpart H §23.433 –Communications—fair dealing.

swaps that meet reporting and risk management requirements, we would also note that the inter-affiliate exemptions on the whole are not harmonized across U.S. regulators.

The SEC and prudential regulators have opted to consider certain inter-affiliate transactions, like OTC initial margin requirements, as in scope for rulemakings. In the instance of a broker-dealer like Credit Suisse, the Federal Reserve Board ("FRB") has significant jurisdiction over our legal entities, including our registered swaps dealers. As such, prudential rules that treat inter-affiliate swaps as in scope for margin requirements often trump the CFTC's inter-affiliate exclusion. To the extent that the CFTC works with the prudential regulators, we request that the Commission reiterate its rational for exempting inter-affiliate swaps from margin and clearing requirements.

In particular, the stated objective of the initial margin rule is to: improve the regulation of swaps markets, reduce systemic risk and provide appropriate incentives for central clearing of swaps. It is not necessary to apply initial margin requirements to inter-affiliate swaps in order to achieve any of these objectives. Imposing initial margin requirements on inter-affiliate transactions needlessly holds captive significant amounts of liquidity and limits the availability of the beneficial risk management functions of inter-affiliate transactions.

Proposal: Promote a Consistent, Harmonized Approach to Cross-Border Definitions in the Title VII Context

The Commission should work with the SEC and the prudential regulators to adopt harmonized "U.S. person" and "guarantee" definitions for purposes of Title VII rules. In addition, to defray compliance costs, the Commission should allow market participants, on a grandfathered basis, to continue to rely on written representations they received regarding a counterparty's status under pre-existing definitions unless and until the counterparty provides notification to the contrary. Since those preexisting definitions will, in most instances, be broader in scope, such grandfathering would, at worst, result in more expansive application of Title VII abroad than is necessary.

Proposal: U.S. Regulators Should Not Have Unfettered Access to Examine Foreign Firms' Businesses That Are Unrelated to U.S.-Regulated Positions

When considering how to harmonize CFTC and SEC rules, we encourage the CFTC to dismiss an SEC proposal that has caused some foreign firms to forgo bringing new SEC-regulated business onshore to the U.S. To encourage foreign firms to trade in the U.S. markets, the SEC (and any other regulator contemplating similar rules) should limit or eliminate the opinion and certification requirements. If the SEC were to limit the scope of the certification, it should cover only the security based swap positions regulated by the agency.

Proposal: ANE Standard is not necessary to mitigate risk to U.S. markets.

Risk to U.S. markets that might be associated with an ANE transaction is adequately captured and mitigated by other rules, such as those pertaining to Foreign Consolidated Subsidiaries. Imposing an ANE standard on swaps would be duplicative and costly. Further, an ANE test discourages foreign firms from hiring U.S.-based employees to work on their global swaps business.

Proposal: U.S. Rules Should Universally Exempt Inter-Affiliate swaps from Initial Margin Requirements

For the reasons listed above, (e.g., discouraging centralized risk management, unnecessarily consuming liquidity and unnecessarily creating third-party exposures), we believe that inter-affiliate swaps should be exempt from the initial margin requirements. As the CFTC embarks on harmonization efforts with other U.S. regulators, we urge the Commission to raise this important issue.