



American
Bankers
Association

Building Success. Together.

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September 6, 2013

The Honorable Gary Gensler
Chairman
Commodity Futures Trading
Commission
Three Lafayette Centre
Washington, DC 20581

The Honorable Mary Jo White
Chairman
The Securities and Exchange
Commission
100 F Street, NE
Washington, DC 20549

The Honorable Bart Chilton
Commissioner, CFTC

The Honorable Kara Stein
Commissioner, SEC

The Honorable Scott O' Malia
Commissioner, CFTC

The Honorable Luis A. Aguilar
Commissioner, SEC

The Honorable Mark P. Wetjen
Commissioner, CFTC

The Honorable Michael Piwowar
Commissioner, SEC

The Honorable Daniel Gallagher
Commissioner, SEC

The Honorable Ben S. Bernanke
Chairman of the Board of
Governors
Federal Reserve System
20th Street and Constitution Ave,
NW, Room 2046
Washington, DC 20551

The Honorable Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the
Currency
400 7th Street, SW Suite 3E-218
Washington, DC 20219

The Honorable Martin J. Gruenberg
Chairman of the Board
Federal Deposit Insurance
Corporation
550 17th Street, NW. Room 6000
Washington, DC 20429

Re: CFTC Interpretations Disproportionately Disadvantage Overseas Branching by U.S. Banks

Ladies and Gentlemen:

The American Bankers Association (ABA)¹ supports the focus of the Commodity Futures Trading Commission (CFTC) on improving transparency and reducing systemic risk in the swaps markets. We have urged the CFTC to take particular care to preserve the longstanding, globally recognized, business model of financial institutions operating abroad through branches—important to many of our members of many different sizes with varied types of commercial customers. We alerted the CFTC that an interpretation that fails to harmonize cross-border implementation or applies the extra-territorial reach of the CFTC's authority in a competitively disparate way would have an immediate

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$14 trillion banking industry and its millions of employees. See the ABA's web page at www.aba.com.

detrimental impact on the business of the overseas branches of U.S. banks, with, ultimately, a permanent loss of U.S. jobs and trade to foreign competitors.

Unfortunately, key aspects of the CFTC's recently published interpretations will impose avoidable harm on U.S. businesses through measures that are not required to meet its systemic risk management goals. As we feared, they will operate to restrict the ability of overseas branches of U.S. banks to participate in local swaps markets as our overseas customers will increasingly avoid doing business with overseas branches, relying instead on our direct competitors to meet their financial services needs. We are already seeing the impact of the disparate treatment of U.S. banks operating via overseas branches relative to both non-U.S. banks and U.S. banks and broker dealers operating via overseas subsidiaries.

ABA asks the CFTC to take immediate action to address two aspects of its interpretations. These interpretations will not increase transparency or reduce systemic risk, but they will undermine the ability of U.S. banks to transact covered activity via overseas branches with their non-U.S. customers (as well as U.S. multi-national companies of all types and sizes operating overseas), and force U.S. banks to move jobs and capital overseas to offer services through financial structures that do not make use of branches.

First, effective October 10, 2013, the CFTC's interpretations will require mandatory clearing of interest rate and index credit swaps entered between a U.S. bank's overseas branches located in Australia, Canada, the European Union, Hong Kong, Japan or Switzerland and non-U.S. customers, subject to U.S. or comparable local rules. Unfortunately, it is clear that despite the collaborative efforts of international regulators, it will not be possible for any of these jurisdictions to implement their own comparable clearing requirements by October 10, even in the European Union. Thus, comparable local rules will not be available by this arbitrary date, and mandatory clearing requirements under U.S. rules will apply from that time forward to swaps entered by non-U.S. person customers with overseas branches of U.S. banks. They will not apply to our competitors in those jurisdictions.

ABA understands that non-U.S. customers have already started to respond by taking their business to non-U.S. trading counterparties, to the disadvantage of U.S. banks with overseas branches. ABA members are reporting—as are U.S. and international news outlets—that their non-U.S. customers have already taken or are threatening to take their business elsewhere. Non-U.S. customers are not willing to expend the significant resources to be in a position first to clear interest rate and index credit swaps under U.S. rules when they are already spending significant resources to prepare for compliance in their own jurisdictions under rules that will likely be considered comparable. The disparate treatment of overseas branches will have immediate and long-lasting deleterious effects on U.S. banks' relationships with non-U.S. customers as they will break existing business ties and establish new ones with competing local firms. This will also diminish market liquidity and undermine enterprise risk management at U.S. financial institutions.

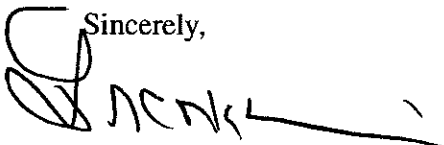
This unnecessarily detrimental result is from an accelerated date that is not fixed by statute, but rather by agency choice. That makes the problem relatively easy to address without sacrificing the CFTC's

transparency and systemic risk reduction objectives. A delay to permit adoption of comparable local clearing rules does not pose insupportable risk as most swaps that can be cleared among swap dealers are already cleared in these markets. The CFTC should provide for an appropriate phase-in period for mandatory clearing of swaps transactions in foreign jurisdictions working in good faith to implement comparable clearing requirements. In fact, we expected this was the intent of the July 11, 2013 agreement in principle reached on a cross border framework between the CFTC and the European Union. We understand the European Union is expecting to finalize its swaps clearing rules mid-2014. Just a few days ago, the European Securities and Markets Authority announced that the E.U. and U.S. clearing rules are sufficiently comparable to support its recommendation that the European Commission adopt that finding.

Second, the CFTC's interpretations impose an unduly restrictive set of conditions on the circumstances in which a given swap can be considered to be executed with an overseas branch of a U.S. bank. In particular, for a swap to qualify as a swap with an overseas branch, employees involved in negotiating and agreeing to the swap—other than solely clerical employees—must be located in an overseas branch. This restriction will force many of our members to relocate U.S. personnel overseas, move overnight coverage away from U.S. trading centers, and move U.S. expertise in U.S. dollar swap products overseas, or put at risk their business relationships with U.S. multi-national and non-U.S. commercial customers. This restriction does not add any substance to compliance with comparable rules in overseas jurisdictions and has no impact on reducing systemic risk in the United States. It only punishes one business model—overseas branching—relative to other business models. The CFTC should reconsider and withdraw this restriction.

We urge the CFTC to address promptly the issues raised in this letter to restore a level playing field to the swaps market, without impairing the systemic risk management goals of the Commission or driving financial services jobs overseas.

Sincerely,



Frank Keating

cc:

The Honorable Debbie Stabenow, Chairwoman
Senate Committee on Agriculture

The Honorable Thad Cochran, Ranking Member
Senate Committee on Agriculture

The Honorable Tim Johnson, Chairman
Senate Committee on Banking, Housing, and Urban Affairs

The Honorable Michael Crapo, Ranking Member
Senate Committee on Banking, Housing, and Urban Affairs

The Honorable Frank Lucas, Chairman
House Committee on Agriculture

The Honorable Collin C. Peterson, Ranking Member
House Committee on Agriculture

The Honorable Jeb Hensarling, Chairman
House Financial Service Committee

The Honorable Maxine Waters, Ranking Member
House Financial Services Committee

Michael S. Gibson, Director, Division of Banking Supervision and Regulation
Board of Governors of the Federal Reserve System

Mark Van Der Weide, Deputy Director, Division of Banking Supervision and Regulation
Board of Governors of the Federal Reserve System

Martin Pfinsgraff, Senior Deputy Comptroller for Large Bank Supervision
Office of the Comptroller of the Currency

Kurt Wilhelm, Director, Financial Markets Group
Office of the Comptroller of the Currency