

March 10, 2014

Melissa D. Jurgens
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street,
N.W. Washington,
DC 20581

Re: Request for Comment on Application of Commission Regulations to Swaps Between Non-U.S. Swap Dealers and Non-U.S. Counterparties Involving Personnel or Agents of the Non-U.S. Swap Dealers Located in the United States¹

Dear Secretary Jurgens:

The American Bankers Association Securities Association (ABASA) appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (CFTC or the Commission) with respect to CFTC Staff Advisory No. 13-69, dated November 14, 2013 (the Staff Advisory), which would apply U.S. transaction-level requirements to a non-U.S. swap dealer regularly using personnel or agents located in the U.S. to arrange, negotiate, or execute a swap with a non-U.S. person.² We also write to address the corollary issues raised by a related U.S. personnel test for determining whether, in conjunction with other factors, a swap is executed “with the foreign branch” of a U.S. swap dealer (a Foreign Branch) for purposes of the Commission’s final cross-border guidance (the Cross-Border Guidance).³

For the reasons discussed in the comment letters on the Staff Advisory submitted to the Commission by the Securities Industry and Financial Markets Association and the

¹ 79 Fed. Reg. 1347 (Jan. 8, 2014).

² Division of Swap Dealer and Intermediary Oversight, Applicability of Transaction-Level Requirements to Activity in the United States, CFTC Staff Advisory No. 13-69 (Nov. 14, 2013).

³ 78 Fed. Reg. 45292, 45330 (July 26, 2013). Specifically, we refer to the requirement that, in order for a swap to be considered one that is “with the foreign branch of a U.S. bank” for purposes of the Cross-Border Guidance, the employees negotiating and agreeing to the terms of the swap (or, if the swap is executed electronically, managing the execution of the swap), other than employees with functions that are solely clerical or ministerial, must be located in the foreign branch or in another foreign branch of the U.S. bank.

International Swaps and Derivatives Association, we urge the following:

- The Commission should not adopt the U.S. personnel test for non-U.S. swap dealers contemplated by the Staff Advisory, and we urge the CFTC to re-consider the U.S. personnel test applicable to Foreign Branches under the Cross-Border Guidance. In particular, applying Title VII of the Dodd-Frank Act to non-U.S. swap dealers or Foreign Branches on the basis of the conduct of U.S.-based personnel will not help, in any respect, to advance the Dodd-Frank Act's objective of mitigating systemic risk or increasing market transparency. Instead, this staff interpretation will impose unnecessary compliance burdens on swap market participants, encourage them to re-locate jobs and activities outside the United States to accommodate non-U.S. client demands, and fragment market liquidity.
- The CFTC should avoid competitive disparities between different categories of swap dealers, by applying analogous treatment of the conduct of U.S. personnel to non-U.S. swap dealers (whether or not a guaranteed affiliate or an affiliate conduit) on the one hand, and Foreign Branches, on the other hand. In other words, identical U.S. personnel activity conducted by two different firms operating in the U.S. should be subject to the same U.S. personnel conduct rules. Such differences have and will continue to result in inappropriate competitive disparities that are inconsistent with the Commission's objective of establishing a legal framework that furthers the public interest.

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We would be happy to discuss any of these issues with you should you wish to do so.

Very truly yours,



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