August 27, 2012

Comment on Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act

Japanese Bankers Association

We, the Japanese Bankers Association, would like to express our gratitude for this opportunity to comment on the Consultative Paper: Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, released on July 12 2012 by the Commodity Futures Trading Commission (the "Commission" or "CFTC").

We hope that our comments below will be of assistance and perhaps offer an additional point of reference as you work towards finalizing the rules proposed by the Commission.

< Preamble >

We would like to express our opposition to the proposed guidance framework imposing registration and compliance with the U.S. rules based on the only fact that the non-U.S. Swap Dealer (SD) is dealing with U.S. persons.

For example, assume a case where a non-U.S. SD transacts a swap deal with a corporate customer in its home country and reduces the risk from such transaction by entering a hedge transaction with a U.S. SD who is making a market. Under the current framework, such non-U.S. SD will be required to register if the aggregate notional value of such dealing activity with the U.S. person exceeds the de minimis threshold. One might argue that, in the case described above, the non-U.S. SD's activity does not constitute "dealing activity" so long as it is not actively making a market. However, the definition of "dealing activity" is ambiguous and ultimately might require the non-U.S. SD to register.

In the above case, the U.S. SD will be required to register, and therefore, certain transaction rules such as mandatory central clearing will also be applied to the non-U.S. SD as a consequence of registration by the U.S. SD. Such consequence is somewhat understandable, given the fact that Clearing requires both sides of the transaction to participate and also central clearing will become a de facto standard between SDs. However, we believe that rules such as Real Time Reporting are sufficient to impose only on the U.S. SD for the U.S. regulatory purpose ant that . So that it is not reasonable to impose the reporting on the non U.S. SD. Although substituted compliance is

admitted in certain cases, it is unclear whether different regulators in each jurisdiction can reach a comprehensive agreement regarding comparability which adds complexity to non-U.S. SDs in terms of compliance. The interest in maintaining the viability of the non-U.S. SD primarily rests with the home country regulator and as such the level and depth of regulation should be determined by the home country regulator.

Considering all the above, we can not agree with the proposed framework of the guidance, and we propose that the rule basically would not be applied outside the U.S.

Moreover, Japanese swap dealers are required to register in Japan and are already adequately monitored and supervised by the Japanese regulatory authority. Requiring Japanese swap dealers to register at the Commission, only on the fact that they transact with U.S. persons, will impose duplicative registration and compliance administration, which burden are not trivial. Especially, the burden would be further increased if substituted compliance was not admitted for transaction level requirements in the case of transaction with a U.S. person. We believe that cooperation and coordination between regulators to harmonize the law of each jurisdiction should be more emphasized rather than each country regulators requiring registration for foreign swap dealers. Having said that we do not oppose that affiliates established under the law of U.S. and U.S. branches of foreign swap dealers should register with the Commission if they have substantial dealing activity with U.S. persons. However, we can not agree with the guidance where it requires the non-U.S. person that is not required to register certain compliance to the rules .

<General comments>

1. Clarification of the definition of "U.S. Person"

First, the definition of U.S. Person is unclear in the proposed guidance and there are a number of practical challenges to identifying counterparties that qualify as a U.S. person. We, therefore, request that steps be undertaken to simply the assessment of U.S. person status, especially for overseas branches of business corporations which would incur excessive amount of effort to overcome the complications and lack of clarity that accompany the current guidance.

This proposed cross-border application guidance states that non-U.S. funds are classified as U.S. persons if a majority of their ownership is held, directly or indirectly, by U.S. persons, even if all their assets are held and operations occur outside the United States. However, the meaning of "a majority of their ownership is held, directly or indirectly" in this context is unclear, and the guidance provides no additional explanation.

Moreover, additional uncertainty exists under the proposed guidance and the *Exemptive Order* proposed on the same day, July 12, with respect to the treatment of foreign branches of U.S. person. This proposed guidance on cross-border application proposes to define foreign branches of U.S. persons as U.S. persons, but *the Exemptive Order* treats foreign branches of U.S. persons as Non-U.S. persons. There is inconsistency between the two proposals. [1]

Foreign branches and funds of U.S. persons will drive fund managers and U.S. investors to reduce access to foreign funds and markets, or exit from their foreign investments, causing significantly diminished liquidity.

To address these issues, we request the clarification of the definition of "U.S. Person", as well as to include in this definition that foreign branches of U.S. person do not qualify for U.S. Person status.

2. Considerations on applying this guidance to cross border transactions across jurisdictions with different regulations

This proposed guidance states that substituted compliance would be permitted for transactions with foreign branches, agencies, affiliates and subsidiaries only if the Commission finds that the relevant home jurisdiction's laws and regulations are comparable to applicable U.S. laws. However, the determination of such comparability should be made in a comprehensive manner, rather than on an individual requirement basis.

Further, we understand the approach taken in this proposed guidance to regulate and treat swap participants operating as foreign branches, agencies, affiliates and subsidiaries as U.S. Persons. However, we believe that Non-U.S. Persons that are counterparty to a swap transaction should be exempted from the cross-border application of the swaps provisions.

Moreover, even if the application of this proposed guidance to transactions with Non-U.S. SDs and Non-U.S Persons is postponed, we assess that there would be no impact on the U.S. market, and hence, we believe that transactions with Non-U.S. SDs and Non-U.S. Persons should be exempted from this rule even after the postponement period has ended.

In cases of Non-U.S. Persons, Non-U.S. Persons may be subject to duplicative regulatory requirements imposed by both home and U.S. regulators, causing market liquidity to be hindered, and an increase in transaction costs. Therefore, we believe that transactions in the home country by

[1]See the comment of the Institute of International Bankers on "Exemptive Order Regarding Compliance With Certain Swap Regulations, RIN 3038-AD85" issued on August 9, 2012. (The third paragraph of Page 3)

non-U.S. Persons should be exempted from the cross-border application of the derivative provisions of the Dodd-Frank Act so long as the non-U.S. Person is subject to its home regulation.

In light of the foregoing considerations, we respectfully request that this proposed guidance on cross-border application of the provisions of the Dodd-Frank Act be finalized after harmonizing with comparable regulations in the other jurisdictions to ensure international consistency of the regulations.

3. Registration requirements of Swap Dealers (SD registration)

Under the regulatory regime in Japan, the registration system is already in place for agencies including swap dealers that deal derivatives (so called "financial instruments intermediary service provider" in Japan). Given that the regulatory environment in Japan is such that Japanese swap dealers are already adequately monitored and supervised by the Japanese regulators, we believe that it is not appropriate to require additional registration under the U.S. regulations as this will impose a duplicative management burden to these swap dealers.

We, therefore, respectfully request that substituted compliance for Non-U.S. Persons be permitted, provided that similar swap dealer registration requirements are implemented in the home country. Alternatively, given that the SD registration requirements under CFTC are a matter of U.S. regulation, such requirements should be limited to those entities whose main trading activities are carried out in its home country or the U.S. for SD registration purposes. In our view, there would be no need to require other Non-U.S. Persons to register as SD if an appropriate monitoring and supervision framework is in place under applicable home jurisdiction laws and regulations. In terms of assessing whether affiliates should be registered as SDs, given the fact that the determination of whether transactions with U.S. Persons constitute a core business depends on each affiliate, it is not appropriate to require aggregation of all transactions with U.S. Persons. Rather, we propose that SD registration criteria are set for each affiliate and the SD registration assessment is carried out on an affiliate-by-affiliate basis.

The guidance provides that SD registration is required to be carried out on an entity-by-entity basis and that the calculation of a de minimis threshold applied in assessing the SD registration includes the transaction volume of affiliates ,while excluding the volume for central book transactions executed through SD U.S. Persons. We believe that transactions of affiliates as an agent of the other are also be excluded from the scope of calculation, or all affiliates would be unnecessarily and unrealistically required to register as SDs. The aggregation rule for affiliates currently adopted in the SD entity rule was not initially proposed. The proposed aggregation rule would impose the

registration requirements even to entities with a limited volume of transactions or to entities with a limited impact on the U.S. economy, which will impose excessive burden to these entities. In fact, to address such a rule, most of these entities would have to push out their swap dealing activities to registered swap dealers. In applying the aggregation rule, it would be appropriate that transactions with registered dealers or transactions in the process of push-out will also be excluded[2]. Understanding that certain entities have already made the decision to push out their swap dealing activities to other registered SDs, it would be, in our view, unreasonable to subject these pushing out entities to comply with the proposed requirements since these requirements would become inapplicable once the push-out process is completed. We note that, in such cases, the amount of time required to complete full push-out is significant and would most likely not be completed by the registration deadline.

4. Setting a reasonable transitional period for SD registration requirements

Swap market participants have not previously been under any regulatory obligation to identify whether they or their counterparties qualify as U.S. persons. Nor does any market practice currently exist to identify whether a counterparty is a U.S. Person. Although similar requirements are imposed in the anti-money laundering and tax law areas, these are different from the definition of U.S. Person in this proposed guidance.
Therefore, in introducing this definition of U.S. Person, we believe that a sufficient preparation period (for example, one year from the finalization of the guidance through implementation of such guidance) would be set aside so that stakeholders of each jurisdiction may prepare for compliance with the new requirements, for example drafting new contractual documents[3].

It is also practical to set forth a conformance period to allow an entity (i) that is located outside U.S., (ii) that is not incorporated under U.S. laws, (iii) having its principal place of business outside U.S., and (iv) which is a foreign branch of a U.S. person to be treated as Non-U.S. Persons over a reasonable period of time, and after this reasonable period of time.

Due to the ambiguity of the definition, most global financial institutions may face the dilemma of vain efforts for the registration compliance or inadvertently violating the registration requirement. It should be noted that the guidance may impose unnecessary burdens for financial institutions which, ultimately, do not have to comply with the guidance.

[2] See the comment of the Institute of International Bankers on "Exemptive Order Regarding Compliance With Certain Swap Regulations, RIN 3038-AD85" issued on August 9, 2012. (Page 5 to Page 6)

[3] See the comment of the Institute of International Bankers on "Exemptive Order Regarding Compliance With Certain Swap Regulations, RIN 3038-AD85" issued on August 9, 2012. (Page 4)

In terms of implementation costs for cross-border application, such costs go beyond those incurred for U.S. entities, and extend to those incurred for non-U.S. entities (for example, costs incurred for assessing comparability to qualify for substituted compliance of home regulation of non-U.S. jurisdiction), hence a significant amount of costs would be incurred. Accordingly, it is important to make an analysis in a view of cost-benefit during formal public comments process and consider whether the benefits of such an effort outweigh the enormous costs.

Also, we note that the cross-border application is still at the stage of Proposed Interpretive Guidance contrary to the U.S. domestic application. It would be preferable to temporarily postpone the cross-border application of the derivative provisions and be discussed separately from the domestic one.

As for the registration requirements, coordination process between US and home regulators requires some time. The provisional registration would be delayed until a reasonable period. Because fundamental uncertainties remain and the U.S. Treasury has not yet issued exemption treatment, we see it irrational to impose the registration requirements. [4]

<Specific comments>

1. Swap Push-out Rule – General (Concept of De minimis Threshold)

The Section 716 of Dodd-Frank Act, commonly referred to as the Swaps Push-Out Rule, will require depository institutions to cease or divest their participation in certain classes of swap activities, or lose access to several types of federal assistance.

Once a non-U.S. person determines that the amount of its swap dealing activities would require a push-out to its U.S.-based derivatives subsidiary, who would be required to register as a SD with the Commission, the non-U.S. person should be able to decide whether to do so or, alternatively, reduce its swap dealing with U.S. person counterparties to below the de minimis amount. Based on the assumption that the aggregate of notional value of swaps will be below the de minimis threshold over the next 12 months, the non-U.S. person has incentives to avoid the U.S. SD registration even though its aggregate of notional amount of swaps were above the threshold as of the registration deadline over the past 12 months.[5] Please clarify whether or not the non-U.S. person in such case

[4] See the comment of the Institute of International Bankers on "Exemptive Order Regarding Compliance With Certain Swap Regulations, RIN 3038-AD85" issued on August 9, 2012. (Page 8 to 9)

[5] See P.30630 of Federal Register/Vol. 77, No. 100. Footnote #422 is as follows:

See CFTC Regulation § 1.3(ggg)(4); Exchange Act rule 3a71–2(a)(1). Over the first year following the effective date of the final rules implementing the statutory definition of ''swap'' and ''security based swap'' as set forth in CEA section 1a(47) and Exchange Act section 3(a)(68), respectively, this notional test will be based on the person's dealing activity

would be exempt from the registration requirement. We believe that such a transition period, if prescribed, would help a non-U.S. person to decide whether to swiftly shift its dealing operations to its U.S.-based derivatives subsidiary or shift its dealing operations to outside the U.S.

2. Aggregation Rules for Swaps (P.41219 of Federal Register/Vol. 77, No. 134)

The Commission notes that section 1.3(ggg)(4) of the Commission's regulations requires that *a person include, in determining whether its swap dealing activities exceed the de minimis threshold, the aggregate notional value of swap dealing transactions entered into by its affiliates under common control. It is the Commission's view that this provision would require that a non-U.S. person, in determining whether its swap dealing transactions exceed the de minimis threshold, include the aggregate notional value of any swap dealing transactions between U.S. persons and any of its non-U.S. affiliates under common control.*

The Commission requires that a non-U.S. person aggregates notional value of any swap deals between U.S. persons and any of its non-U.S. affiliates under common control. A concept of "under common control" allegedly means that we are required to take into account any entity controlling, controlled by, or under common control with a certain non-U.S. person. From the view point of the main operating dealer established in Japan, its parent company headquartered in Tokyo definitely falls into "under common control". But it is uncertain whether or not the main dealer's sibling entity, which is directly under the parent company, falls into "under common control". Please clarify how to treat the main dealer's sibling entity. This is crucial when we determine whether the swap activities exceed the de minimis threshold.

3. Q1: Transactions using Non-U.S. Central Counterparties (CCP) (P.41218 of Federal Register/Vol. 77, No. 134)

We would like to request to clarify when a non-U.S. person trades with a U.S. SD and immediately novates the swap transaction to a non-U.S. CCP, is the transaction regarded as one with a U.S. person. We need explanation of that, regardless of where a CCP is incorporated, whether we should recognize that the transaction is executed with a U.S. person, depending on the original swap counterparty or not. This is important when we determine whether the swap activities exceed the de minimis threshold. If we are required to depend on the location of CCP, how should we treat a U.S. CCP (e.g., CME, ICE)? In such case, a non-U.S. person will be inclined to not use U.S. CCPs.

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following that effective date. See id. Accordingly, the analysis of whether a person may take advantage of the de minimis exception will not encompass the person's dealing activity prior to that effective date, given the need for the person to know whether an instrument is a swap or security based swap for purposes of the analysis.

4. Q1a: Non-U.S. Person guaranteed by U.S. Person (P.41218 of Federal Register/Vol. 77, No. 134)

Although we can not agree with the proposed framework as mentioned in the preamble, if non-U.S. SDs are required to register we strongly support the Commission's approach not including in the definition of "U.S. person" a non-U.S. person guaranteed by a U.S. person. In the case where a U.S. person has a counterparty that is a non-U.S. person guaranteed by a U.S. person, the primary risk of loss stemming from the non performance by the U.S. SD/Major Swap Participant (MSP) is incurred by the non-U.S. person, not by the U.S. guarantor. Thus such guaranteed non-U.S. person will not pose significant risk to the U.S. financial system, therefore we believe it doesn't need to be included in the definition of U.S. person.

Another reason why we don't believe it is appropriate that non-U.S. person would be included in the definition of "U.S. person" is that, if such guaranteed non-U.S. person is regarded as "U.S. person", the substitute compliance regime will not be applied to the transactions between such guaranteed non-U.S. person and a non-U.S. SD, which may cause double regulations for the non-U.S. SD because the non-U.S. SD will have to comply with the home country regulation as well as the Dodd-Frank regulation. This is too much burden for the non-U.S. SD.

5. Q1c: Non-U.S. Person controlled by or under control of U.S. Person (P.41218 of Federal Register/Vol. 77, No. 134)

We can not agree with the concept that a non-U.S. person who is controlled by or under common control with a U.S. person would also be considered a U.S. person. If such non-U.S. person is regarded as "U.S. person", the substituted compliance regime will not be applied to the transactions between such non-U.S. person and a non-U.S. SD, which may cause double regulations for the non-U.S. SD because the non-U.S. SD will have to comply with a home country regulation as well as the Dodd-Frank regulation. This is too much burden for the non-U.S. SD.

6. Q2: Concept of Regular Business (P.41220 of Federal Register/Vol. 77, No. 134)

Based on the same reason mentioned in the response to Question 1a, we agree with the Commission that a non-U.S. person need not consider swap dealing on "a regular business" basis with non-U.S. persons in determining whether it is a SD or not.

7. Q 3c, Q 5: Aggregation of affiliates under common control (P.41222 of Federal Register/Vol. 77, No. 134)

We are of the opinion that in determining whether a non-U.S. person is a SD or not, the notional amount of swap dealing conducted by its non-U.S. affiliates should not be included.
Affiliates are different entity and whether to register should be judged on a stand alone basis. Assume a case where there are several affiliates each conducting dealing activity but not exceeding the threshold on a stand alone basis. If the aggregation rule is applied, each affiliate will have to register even if each entity's swap activity is well below the threshold not negatively affecting the integrity of U.S. financial market.

To include the activity of its affiliate will have a negative outcome for foreign banks. Currently under the Dodd Frank Act, foreign banks are restricted from access to federal assistance, e.g., discount window, if they register as a SD/MSP. If the aggregation of affiliates' dealing activity is required and as a result the non-U.S. bank is required to register as a SD/MSP, even if its dealing activity does not exceed the de minimus threshold, then the non–U.S. bank will lose access to federal assistance, which result is rather irrational. Also, a solution for foreign banks to both maintain its current dealing activity and access to discount window is to push out its swap activity to its affiliate and register such an affiliate as a SD/MSP. Aggregating registered affiliate's dealing activity in such case will render such transition meaningless and ultimately will deprive foreign banks' any solution from maintaining access to discount window.
Moreover, in the case where the affiliate registers as a SD/MSP, the purpose of the rule is satisfied by such registration and there seems no need to require the non-U.S. person to register so long as the non-U.S. person's dealing activities do not exceed the de minimis threshold contemplated by the rule.

8. Q5: Aggregation of affiliates under common control (P.41222 of Federal Register/Vol. 77, No. 134)

We would like to support the idea that, to the extent that a non-U.S. affiliate is registered as a SD, the notional amount of swaps entered by such registered SD will not be aggregated with the notional value of swaps entered by the other non-U.S. affiliate. In case non-U.S. person has to aggregate the notional amount of swaps entered by such registered SD with the notional value of swaps entered by the other non-U.S. affiliate, we are afraid a chain reaction of SD registration might happen. That is, a registered SD affiliate whose regulated dealing activities exceed the de minimis threshold amount may require other affiliated group companies of registration who engage in swap business even if the notional amount value of swaps entered by each group company is much below the de minimis threshold level. In that case the integrity of the U.S. financial system

will be maintained simply by requiring the registration and compliance with the various rules by the affiliate whose dealing activity exceeds the de minimis threshold.

9. Q 10: Substituted compliance for SDR reporting (P.41231 of Federal Register/Vol. 77, No. 134)

The proposed guidance contemplates that substituted compliance is permitted for SDR Reporting when the Commission has direct access to data regarding swaps between a non-U.S. SD/MSP and its non-U.S. counterparties. We understand that in the case of U.S. counterparties the Commission has interests in monitoring such swaps and hence should have access to the SDR Reporting data. However, in the case of non-U.S. counterparties such swaps have no U.S. nexus and therefore have no negative effect to the U.S. financial system. Requiring data access to swaps between non-U.S. counterparties as a condition for substituted compliance for SDR reporting is unreasonable and we hope it will be removed.

10. Q 12: Substituted compliance for transactions between a Non-U.S. SD/MSP with a U.S. Person (P.41232 of Federal Register/Vol. 77, No. 134)

We understand that in the case where the counterparty is a U.S. person, U.S. regulators have interests in supervising and regulating transactions with such U.S. counterparty and therefore there is a basis for direct application of Dodd-Frank rules and regulations. On the other hand, foreign regulators also have interests in supervising and monitoring such transactions. In such case regulators around the globe have respected the notion of international comity and host-home country supervision where home and host country regulators balance the interests and try to accommodate each other. Also, we are of the opinion that each jurisdiction should respect the effort of harmonizing derivatives rules globally by other jurisdictions. Considering above, we are of the opinion that although Dodd-Frank rules and regulations apply directly to the U.S. person, substituted compliance should be permitted for the non-U.S. SD/MSP.

11. Q 15: Transactions with Non-U.S. counterparty whose swap obligations are guaranteed by U.S. Person (P.41232 of Federal Register/Vol. 77, No. 134)

We appreciate the Commission's approach in regards of permitting substituted compliance where the counterparty is a non–U.S. person guaranteed by a U.S. person. In the case where the non-U.S. SD/MSP's counterparty is a non-U.S. person, the local regulator has a strong interest in supervising and regulating the transactions. This is also true where the counterparty is a foreign branch or agency of a U.S. person. In such case regulators around the globe have respected the notion of international comity and host-home country supervision where home and host country regulators

balance the interests and try to accommodate each other. The Commission's approach in permitting substituted compliance in the case where the counterparty is a non-U.S. person guaranteed by a U.S. person correctly reflects this notion of international comity and host-home country supervision and therefore, we strongly support the Commission's approach.

12. Q12: Transactions with a conduit (P.41232 of Federal Register/Vol. 77, No. 134)

Requiring compliance with Transaction-Level Requirements where the counterparty is a conduit of U.S. person poses significant challenges to non-U.S. SD/MSPs and we are of the opinion that the Commission should reconsider this requirement. The proposed guidance has three prongs in determining whether the swap is with a counterparty that is a conduit of U.S. person:
(1) a non-U.S. counterparty is majority-owned by a U.S. person,
(2) the non-U.S. counterparty regularly enters into swaps with one or more other U.S. affiliates or subsidiaries of the U.S. person, and
(3) the financials of such non-U.S. counterparty are included in the consolidated financial statements of the U.S. person.
The second element is difficult to ascertain and would require that as a matter of due diligence the non-U.S. SD/MSPs check the books of non-U.S. counterparty on a regular basis, which is impracticable and also impossible if the non-U.S. counterparty refuses to disclose the books based on the reason of confidentiality. We understand the Commission's concern on this matter, however, given the difficulties in ascertaining the existence of the elements, we think that the concept of conduit should not be implemented.

13. Q 26: Comparability determination (P.41234 of Federal Register/Vol. 77, No. 134)

We appreciate the Commission's approach in admitting substituted compliance in certain cases. However, we would like to voice our objection to the method in finding comparability. We are of the opinion that comparability should be based on whether or not rules and regulations of each jurisdiction are comparable with what has been agreed upon in the G20 summit in Seoul in 2010 and the subsequent rules and regulations that regulators and supervisors around the globe have agreed upon in order to implement through their efforts for harmonization.

14. Q 3: Application of the Transaction-Level Requirements – General (P.41235 of Federal Register/Vol. 77, No. 134)

In the case of non-U.S. person other than a SD/MSP trading with a U.S. person, the guidance provides that clearing, trade execution, real time public reporting, large trade reporting, SDR

reporting and recordkeeping will apply to such transaction. However, we believe that to require a non-U.S. person who is not even registered as a SD/MSP to comply with the rules is extremely broad and would pose undue burden on non-U.S. persons who are not registered. Moreover, from a regulatory perspective, it would be difficult to ascertain who is trading with such U.S. person if the non-U.S. person is not registered. As such, we believe that this requirement should not be implemented.

15. Treatment in cases where a non-SD/MSP executes transactions with an SD/MSP SD/MSP - "5. Application of the Transaction Level Requirement" (P.41228 of Federal Register/Vol. 77, No. 134） and "V. Cross-Border Application of the CEA's Swap Provisions to Transactions Involving Other (Non-Swap Dealer and MSP) Market Participants" (P.41234 of Federal Register/Vol. 77, No. 134)

"5. Application of the Transaction Level Requirement" stipulates whether the requirements are applied to SDs and MSPs on a counterparty basis. "V. Cross-Border Application of the CEA's Swap Provisions to Transactions Involving Other (Non-Swap Dealer and MSP) Market Participants," provides the requirements imposed on a counterparty basis where both transaction participants are a non-SD/MSP. However, the proposed guidance is not unclear as to whether the requirements are applied to a non-SD/MSP if the non-SD/MSP executes transactions with an SD/MSP.

Careful consideration are necessary not to impose such requirements on non-SD/MSPs simply because SD/MSPs executes transactions with a non-SD/MSP counterparty.

16. The definitions of the dealing activity subject to the regulation – "C. The Definitions and Registration Thresholds," "2. Swap Dealer," and "ii. Regular Business" (P.41220 of Federal Register/Vol. 77, No. 134)

We request the Committee to make it clear about the definition of the dealing activity which will be subject to the regulation or show more specific transaction examples for interpretation.

For example, we would like to confirm that a CDS hedge used for the purpose of controlling the credit risk and changes in value of the assets on loan is excluded from the dealing activities in aggregating notional value to determine if it exceeds the de minimis threshold (8 billion dollars) for SD registration purposes. It is noted that if the definition of the dealing activity remains unclear, this may unnecessarily result in reducing amount of the transactions with U.S. Persons.

In Japan, transactions which are charged with market risk capital requirements under the Basel accord are basically classified to 'trading accounts' separately from 'banking accounts.' It is preferable that dealing activity which will be subject to the regulation is limited to those which are classified to trading accounts in each jurisdiction.

17. Individuals that require registration

It seems significantly unreasonable, especially for SDs that have filing obligations but with limited non-swap dealing operations, to include individuals who are officers, directors and persons who own ten percent or more of the outstanding shares. We believe it appropriate to limit registration of individuals to senior officers or heads of the departments for filing purpose.[6]

18. Classification of Entity-Level Requirements and Transaction-Level Requirements

The guidance appears that whether provisions for the requirements can be conceptually divided into the Entity-Level or Transaction-Level by the possibility of firm-wide risk mitigation. However, it would be more reasonable and practical to focus on whether they are matters in relation to each transaction or a whole function of each firm. Accordingly, for example, Swap Trading Relationship Documentation, Portfolio Reconciliation and Compression, Daily Trading Records and External Business Conduct Standards, which are classified as the Transaction-Level Requirements in the proposed guidance, is more appropriate to be classified as Entity-Level Requirements since they relate to counterparty risk management as well as compliance.

19. Q 2, Q 3d, Q 3e: Treatment of trust accounts (P.41220 of Federal Register/Vol. 77, No. 134)

In Japanese banks, every swap transaction using trust accounts which are subject to the ISDA Master Agreement has the limited recourse provisions so that there is no possibility that the default of a transaction fund will lead to default of the bank. Therefore, swap transactions in trust accounts do not need to be subject to the assessment for SD/MSP registration as they are kept from a chain of defaults, nor have significant impact on the financial system in the U.S.

End

[6] See the comment of the Institute of International Bankers on "Exemptive Order Regarding Compliance With Certain Swap Regulations, RIN 3038-AD85" issued on August 9, 2012. (The first paragraph of Page 8)