SOCIETE GENERALE
Corporate & Investment Banking

August 8, 2012

Mr. David Stawick
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 Certain Swaps Provisions of the Commodity Exchange Act
Notice of Proposed Exemptive Order

Dear Mr. Stawick:

Société Générale ("SG") appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the "Commission") on both the Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act (the "Guidance")[1] and the Notice of Proposed Exemptive Order[2] (the "Order" and, together with the Guidance, the "Proposals") under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). In this letter, we respectfully suggest certain modifications to the Proposals. We note that the Commission has or will be receiving letters from the International Swaps and Derivatives Association, the Securities Industry and Financial Markets Association and the Institute of International Bankers. SG supports the points made in these letters; our letter elaborates further on certain issues raised therein.

SG's comments are divided into three main categories. First, we discuss the serious problems posed to SG because the Proposals will not be finalized before we need to consider whether we need to register as a swap dealer, and what entities would be appropriate to register. Second, we discuss several concerns with regard to the potentially broad jurisdictional scope assumed by the Commission in the Proposals. Finally, we discuss certain unanticipated issues with respect to swap dealer registration of a non-U.S. person.

[1] Commodity Futures Trading Commission, Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, Fed. Reg. Vol. 77, No. 134 (July 12, 2012).

[2] Exemptive Order Regarding Compliance with Certain Swap Regulations, Fed. Reg., Vol. 77 No. 142 (July 24, 2012).

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Coordination of the Timing of the Proposals and Swap Dealer Registration

The Commission has stated that it is committed to an orderly transition to Title VII rules.[3] However, final regulatory determinations that are essential to the implementation of CFTC rules are either still in proposed form -- such as the "U.S. person" definition in the Proposals and the treatment of foreign currency transactions[4] -- or have only recently been finalized-- such as the lengthy "swap" definition. Requiring implementation of Title VII rules before these definitions are clear or final will not promote an orderly or effective transition. The swap definitions are extremely complex and, in particular because they draw very fine dividing lines through businesses that have traditionally been run as a whole (credit default swaps and equity swaps), will require intricate systems reprogramming and significant changes to operational procedures. The U.S. person definition, which is only in proposed form, contains ambiguities that must be resolved so that the definitions can be translated to automated referentials and programmed into trading systems. Making systems changes is a very time-consuming and expensive process that simply cannot be done quickly enough and with the required precision to comply with the expedited implementation schedule the Commission envisions.

If swap dealer registration becomes mandatory before the Guidance is final, SG (and many other banks) will be in the untenable position of having to register as a swap dealer and commence compliance with Title VII rules without full clarity on the consequences of doing so. Our Board is concerned that it may not be prudent to expose SG to new and extensive regulatory oversight if the extent of the oversight, and all applicable rules, are not known. To that end, SG urges the Commission to delay mandatory swap dealer registration at least until there has been an adequate comment period on the Proposals and the Guidance has been issued in final form.

SG also believes that the Guidance should be issued as a formal rulemaking. Because the Guidance is so integral to Title VII compliance, it will inevitably be treated as a formal rulemaking. Swap market participants and foreign regulators require clear rulemaking on this critical piece of Title VII compliance. Without it, Title VII compliance is likely to be incomplete and inconsistent across the industry. SG, along with many others, has been requesting that the Commission provide guidance on Title VII extra-territorial issues for almost two years.[5] We fully understand the complexity of the task

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[3] *See, e.g.,* Order at 41112.

[4] The swap definition is only partially complete because market participants are awaiting the Treasury Department's determination with respect to whether certain foreign currency transactions are swaps. This determination will have a big factor in market participants' implementation of the Act.

[5] *See, e.g.,* Letter to the Commission, dated November 23, 2010, in which we noted that "we hope the Commissions will agree on the need for flexibility in Swap Dealer registration and expeditious regulatory clarity on the extent of extraterritorial jurisdiction under Title VII of the Act and the application of prudential requirements to foreign bank registrants." See also Letters, dated February 17, 2011 and January 11, 2011, from an *ad hoc*

facing the Commission, and are very grateful that the Commission has finally produced the Guidance, with which we agree in substantial part. But, after such a lengthy period, we urge the Commission not to rush to implement a cross-border framework without adequate input from the financial services industry, other U.S. regulators[6] and foreign regulators, adequate time to deliberate on and adopt final rules, adequate time to coordinate these final regulatory decisions with international regulators and adequate time for those subject to the new rules and other affected parties to prepare to implement them.

Scope of the Proposals

In addition to our significant concerns about timing of implementation, SG is also concerned about the broad jurisdictional scope asserted by the Commission, implicitly and explicitly, in the Guidance. In particular, the definition of U.S. person is far broader than we, and we believe other market participants, have generally assumed it would be for purposes of implementation preparation and broader than any of the U.S. person definitions used currently in our securities laws. We are concerned that this definition will cause serious compliance problems throughout the industry.

CFTC Jurisdiction. The Commission correctly notes that the swaps market today is global in nature. There are more non-U.S. swap dealers than there are U.S.-swap dealers among the G-15 group, which represents the world's largest derivatives dealers. As a result, the proposed rules will have significant extra-territorial impact. However, it is not pre-ordained that the scope of the Commission's regulation must have such a significant extra-territorial effect, and such broad scope is potentially problematic. The Commission's repeated assertion in the Guidance of a "strong supervisory interest" in so many aspects of the offshore swap market contradicts the Commission's statements about respecting international comity.[7] Judging from the reaction of some foreign regulators to the Guidance,[8] the Guidance also seems to contravene Section 752 of the Act itself, which commands the Commission to

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group of foreign banks, to the Commission, Securities Exchange Commission and the Federal Reserve Board of Governors.

[6] The Securities and Exchange Commission ("SEC") has stated its intention to issue its own cross-border guidance. Given that most, if not all, swap dealers will also be regulated by the SEC as security-based swap dealers and some swaps will be regulated by both the Commission and the SEC, it is of the utmost importance that the Commission and the SEC adopt a uniform approach to the cross-border application of their rules.

[7] We agree with Commissioner Sommer's Statement that the CFTC has "worked for decades to establish relationships with our foreign counterparts built on respect and trust, and should not be so eager and willing to disregard their capabilities."[7] *See* Guidance at Appendix 3.

[8] *See, e.g.,* Letter from Patrick Raaflaub, Chief Executive Officer, and Mark Branson, Head of Banks Division, Swiss Financial Market Supervisory Authority to Chairman Gary Gensler (July 5, 2012).

consult and coordinate with foreign regulators on the establishment of "consistent international standards."[9]

In order to ensure consistent international standard, and to avoid having large international banks like SG subject to a patchwork of international regulation, SG urges the Commission to work further with other U.S. and foreign regulators to expand the rules to which "substituted compliance" applies and to ease its implementation schedule so that other regulators have time to finalize their own swap rules. This is particularly important given that Europe has or will have rules that are comparable to most Title VII requirements and that the SEC has yet to finish its own Title VII rules. SG appreciates that the Commission's Order would permit non-U.S. swap dealers to apply to use substituted compliance in certain areas. However, given the gap between the CFTC's implementation schedule and that of non-U.S. jurisdictions, the benefits of the Order may very well be illusory.

Under the proposed Order, European banks would be required to implement Title VII entity-level rules on a temporary basis, beginning next July, unless the European rules have already come into effect, which may not be the case, and the CFTC has deemed such rules to be comparable. Implementing Title VII entity-level rules for this limited period of time would be inefficient and costly. SG urges the Commission to indicate prospectively that it will grant substituted compliance "credit" to all the EMIR and MIFID II rules that are analogous to Title VII -- even if such rules are transaction-level -- so that non-U.S. swap dealers can accurately plan a coordinated Title VII, MIFID and EMIR implementation and use our resources efficiently. Such a blanket mutual recognition regime would avoid a great deal of uncertainty; it would also allow the Commission to preserve its resources by making one determination with respect to European firms rather than reviewing multiple compliance plans and responding to each.

Definition of U.S. Person. The Commission will surely receive numerous letters from other institutions commenting on the problems with its proposed definition of "U.S. Person", so our comments will focus on several critical high-level issues facing SG. First, as a practical matter, certain elements of the U.S. person definition require swap dealers to have information that most, if not all, do not currently maintain with respect to their clients. For example, whether a pooled vehicle is "directly or indirectly" majority owned by a U.S. person requires a detailed knowledge of each client's entire corporate ownership structure and perhaps even requires additional knowledge about the owners' ultimate ownership structures. Likewise, whether the direct or indirect owners of a U.S. legal entity are "responsible for the liabilities of such entity" requires extensive knowledge of each client's legal structure. Because most swap dealers typically do not maintain this type of information with respect to their clients, there is no practical way for swap dealers to know which clients are U.S. persons under the proposed Guidance without an extensive due diligence process for each of its counterparties.

[9] 77 Fed. Reg. 41223, Section 752.

Second, to gather such detailed information on a per-client basis and modify our systems to store that information is a lengthy process that cannot be completed in time to effectuate the relief provided in the Order. It is also unlikely to be completed prior to the effectiveness of many of the Commission's final rules based on the Commission's current schedule. Notably, because the proposed definition of U.S. Person is dramatically different than U.S. person definitions in other areas of U.S. law and is a substantial departure from current market practices, SG does not believe it could rely on representations made by counterparties in existing trading agreements and account opening documents. It will be an enormous task for each individual swap dealer to contact each of their thousands of clients, obtain the information (if the client is willing to provide it), modify their systems to store the information, and reprogram trading systems to take the information into account when making the myriad decisions required to comply with Title VII. Moreover, it will not be cost-efficient for swap dealers to build a compliance regime based on the definition until it is final and swap dealers have had time to seek clarification on it. The more ambiguity in the definition, the more each swap dealer will be required to apply its own interpretation of the term, and the less the term will have consistent meaning across the industry.

Third, as a policy matter, it is unclear why swap dealers should be responsible for obtaining and updating this detailed information, much of which is not public information and simply unknowable to anyone but the client. Swap dealers should be permitted to rely on representations from clients as to whether a client is a U.S. person and should not be required to look beyond such representations unless the swap dealer has actual knowledge that such representations are false. We would also strongly recommend that this information be kept in a central industry database or made part of the client's LEI so that clients are treated consistently across all financial institutions.

Fourth, the determination of U.S. person status becomes extremely complex with some specific counterparties like asset managers. In the event an asset manager places a "bunched order," swap dealers are not told of the client's allocation of the order until after the trade, often hours later. Without knowing the final allocation, it is impossible to know whether an order is initially on behalf of a U.S. person, which means that accurate compliance is also impossible across a host of Title VII Rules. This is a problem that will arise repeatedly in Title VII implementation, and SG urges the CFTC to consider the feasibility of many of its rules in light of the standard practices of the asset management market.

In order to mitigate these potential problems, SG suggests that the Commission should -- at least for a reasonable initial period -- adopt a simpler definition of U.S. person that swap dealers can use immediately. For this purpose, the U.S. person definition in the SEC's Regulation S[10] is well understood and most dealers have sufficient information about their clients to rely on this definition. Alternatively, the Commission could, as a starting point, greatly simplify its own U.S. Person definition, while putting

[10] 17 C.F.R. 230.902.

the industry on notice that over a published time schedule additional "prongs" of the definition will be implemented. Or the Commission could delay Title VII implementation until there is an industry-standard way to identify and categorize clients. No matter which option the Commission selects, SG believes that the Commission must take some action to alleviate the extreme difficulties posed by its proposed U.S. person definition.

The timing of the finalization of the U.S. person definition is not an academic issue. The Order incorporates the proposed definition of U.S. person included in the Guidance; swap dealers wishing to take advantage of the Order will be required to rely on the proposed definition in the Guidance (if the

Guidance is not finalized by the swap dealer registration deadline). While SG appreciates the difficulty of defining U.S. person broadly enough to avoid regulatory arbitrage, we think the Commission has in effect undermined its own Order by requiring swap dealers to either guess what the final contours of the U.S. person definition will be or try to implement the proposed definition without the benefit of final Guidance and Commission deliberation.

Entity/Transaction-Level Rule Distinctions. The Guidance divides Title VII obligations into two categories: "entity-level" obligations and "transaction-level" obligations. SG agrees with this division generally and agrees that the obligations defined as entity-level are appropriate. However, there are obligations defined by the Commission as transaction-level that we believe should be entity-level instead. In this category, we include certain rules[11] relating to confirmation processing and rules relating to portfolio reconciliation and compression (the "Confirmations Rules").[12]

The Commission refers to entity-level obligations as being "core operations." SG's back office operations are at the core of SG's swap business. Confirmation processing and portfolio reconciliation and compression all relate to the functioning of a swap dealer's "back office" operations and are tied to a swap dealer's trading systems. Foreign banks with centralized booking models are more likely to maintain a centralized back office function. This is the case with SG; our back office, which is based in Paris, centrally processes swap confirmations for all of SG's global swap business. Implementing Confirmation Rules on swaps with U.S. Persons only is extremely difficult from a technological standpoint. Therefore, if the Commission's Confirmations Rules are treated as transaction level, SG will have to apply these rules to our entire back office system. This result is contrary to the Commission's statements that the Proposals aim to respect international comity.

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[11] *See*, CFTC "Notice of Proposed Rulemaking, "Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants." Fed. Reg., Vol. 75, No 248 (December 28, 2010).

[12] We note that it is difficult to comment fully on the cross-border application of rules that are not yet in final form. Our comments herein are based on our understanding of the proposed Confirmations Rules.

Additionally, considering the actual magnitude of the issue, it is not clear that the Commission's supervisory interest in the functioning of our back office supersedes that of our home country regulators. The large majority of our swaps are already cleared and confirmations for those swaps are already sent out on a same-day basis. We already participate in regular portfolio compression and industry-wide portfolio reconciliation practices. As the Commission itself recognized in the Confirmations Rules, swaps that are electronically traded or cleared will automatically satisfy the confirmation requirements and swaps that are cleared will satisfy the reconciliation rules.[13] Further, with respect to cleared swaps, SG intends to participate in clearing house portfolio compression exercises.

Accordingly, the Confirmations Rules would apply only to those swaps that are either bespoke or for which there is no electronic affirmations system, electronic trading platform or clearinghouse. The amount of these swaps is relatively small in comparison to the swaps that are electronically confirmed and/or cleared. Therefore, at least numerically, the Commission's argument that it has a strong supervisory interest in this part of our business would seem to be overestimated. We respectfully request that the Commission reconsider the rules which inadvertently or purposely exert supervisory control over every part of the global swaps business of an international bank like SG; some aspects must be less important to the CFTC's mission than others and should be left to home country practices and rules. For the same reasons, we do not believe confirmations processing of foreign banks' uncleared swaps rises to the level of an activity that has "a direct and significant connection to activities in, or effect on, commerce of the United States,"[14] which is the statutory standard required for the Commission to assert such broad jurisdiction.

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[13] In the Confirmations Rules proposal, the Commission stated:

> For swaps executed on a SEF or a DCM, the SEF or DCM will provide the counterparties with a definitive written record of the terms of their agreement, which will serve as a confirmation of the swap. Similarly, if a swap is executed bilaterally, but subsequently submitted to a DCO for clearing, the DCO will require a definitive written record of all terms to the counterparties' agreement prior to novation by the DCO; this too would serve as a confirmation of the swap.
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> When a swap is cleared by a central counterparty, the problems that portfolio reconciliation is designed to solve (agreement on all terms and the valuation of the swap) no longer exist because the clearinghouse (1) requires a definitive written record of all terms of the swap; and (2) arrives at a settlement price for all cleared swaps on a daily basis.

Additionally, the Commission requires DCOs to offer portfolio compression exercises on a regular basis. Confirmations Rules at 81520.

[14] 7 U.S.C. 2(i).

Swap Dealer Registration

The Guidance raises, or does not address, certain issues that we believe are critical for a foreign bank's determination as to how to register as a swap dealer. SG requests that the final Guidance address the issues raised below, which will otherwise be impediments to swap dealer registration for a number of non-U.S. applicants.

Aggregation Rules. The Guidance states that a non-U.S. person, in determining whether its swap dealing transactions exceed the *de minimis* threshold, must include the aggregate notional value of its U.S. and its non-U.S. affiliates' swap dealing transactions with U.S. Persons. SG interprets this to mean that each of our non-U.S. affiliates engaged in even a small amount of swap dealing with U.S. persons would be required to register as a swap dealer – because each such affiliate will have to aggregate its swaps with SG (assuming SG's swaps exceed the *de minimis* level). If this is a correct reading, every swap dealing affiliate of a non-U.S. swap dealer will be over the *de minimis* level and will have to register as swap dealers -- even if the swaps with U.S. persons are a minor percentage of the affiliates' dealing activity and even if such activity is completely offshore. SG does not believe this is the intent of the Act, nor should it be such a requirement. If the Commission believes that application of the aggregation rule to affiliates of non-U.S. banks is necessary to deter evasion of its rules (a belief with which, for the record, SG does not agree), SG suggests that a more reasonable approach would be to aggregate only the swap dealing activities of the non-U.S. affiliates of a non-U.S. registered swap dealer, excluding from aggregation the swaps of the registered swap dealer itself.

Form 7-R Representations. SG, and other non-U.S. firms, cannot execute Form 7-R as currently written. The Form requires certain representations and covenants[15] that many non-U.S. firms, including SG, simply cannot make due to various home country privacy and information laws. This issue is quite serious because misrepresentations in Form 7-R carry criminal penalties. In SG's case, there are, in fact, French blocking laws,[16] secrecy laws[17] and privacy laws protecting the information of natural

[15] *See, e.g.,* the "Firm Agreement" section of Form 7-R, at page 40, relating to agreements made by foreign applicants.

[16] The Blocking Statute (Law no. 68-678, dated July 26, 1968, as amended) prohibits a French bank from providing "documents or information of an economic, commercial, industrial, financial or technical nature, aimed at the constitution of proof in view of foreign legal or administrative proceedings or in the context of such proceedings."

[17] The French Banking Secrecy Statute (Art. L. 511-33 of the French Monetary and Financial Code) prohibits the disclosure of certain information relating to an entity or individual unless the person or entity has consented to the release of such information. The transfer of information or documents covered by bank secrecy could trigger criminal prosecution. The Banking Secrecy Statute does not apply when information is disclosed to a judicial authority acting within the context of criminal proceedings.

persons[18] (collectively "Information Laws"). Although the existence of the Information Laws means that SG cannot make the required representations on Form 7-R, none of the laws mandates a total prohibition on the provision of information to the Commission. Moreover, there are mechanisms in the Information Laws that the Commission can utilize to obtain relevant information in order to fulfill its regulatory mission.[19]

We suggest that Form 7-R be amended so that the representations and covenants at issue can be made expressly subject to applicable home country Information Laws. Appendix A sets forth the language that SG suggests can be added to Form 7-R. In addition, SG believes that the required Compliance Plan should include an explanation of how each applicant proposes to comply with relevant Information Laws. If the National Futures Association ("NFA") is not comfortable with that explanation, it can deny or revoke the applicant's provisional registration status. SG believes that the NFA has such authority in CEA Section 4(s)(j). We think our proposals would represent a reasonable accommodation by the Commission to the potential conflict between the CFTC's information needs, and the home country laws that impact and constrain international banks conducting a global swaps business.

However, even with the changes proposed in Appendix A, French Information Laws do, under certain limited circumstances, forbid a French company from providing information to a foreign regulator without the use of either a treaty or memorandum of understanding ("MoU") with the relevant regulators. As a result, the Commission should understand that even with the suggested changes to Form 7-R, SG will not be able to provide certain information directly to the Commission or NFA in certain limited circumstances. Therefore, the standard for accepting an applicant's Compliance Plan must include the acceptance that certain information may only be provided by MoU or treaty.

The Commission should take note that both it and the NFA have entered into arrangements with French regulators to provide mutual assistance on regulatory matters. The Commission has entered into an Administration Agreement with the Autorité des Marchés Financiers, formerly the Commission des

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[18] The French Law on Information Technology and Liberties (Law no. 78-17, dated January 6, 1978) prohibits the disclosure of certain individual information but applies only to natural persons (with whom SG rarely enters into swaps), but does permit the disclosure of the information if the French entity needs to do so to exercise or defend a legal right such as in an enforcement proceeding. The Law on Information Technology and Liberties does not apply if the French entity needs to disclose information to exercise or defend a legal right.

[19] The Blocking Statute permits a French bank to provide information located in France to the Commission and NFA in the ordinary course of business but prohibits the provision of information to assist in an enforcement proceeding. The Blocking Statute also permits non-French regulators to receive information necessary for enforcement proceedings through a cooperation agreement with the French banking and securities authorities. The Blocking Statute requires that a party inform the French Ministry of Foreign Affairs of any requests for evidence emanating from abroad. A French bank is permitted to provide information to a foreign regulator in respect of any routine investigations not related to a potential or actual litigation, the direct transfer of information by Société Générale to U.S. Authorities would fall within the letter of the Blocking Statute.

Opérations de Bourse (the "AMF").[20] Although the Administration Agreement was negotiated well before Title VII was envisioned, it is written generally and establishes a system for mutual assistance in order to facilitate the ability of the Commission and the AMF to perform their respective duties and to "secure compliance with any law or regulation." It specifically requires cooperation with investigations. The NFA also has entered into a MoU with the AMF,[21] which was signed in 2010, after the passage of Title VII, and we believe implicitly includes swaps. In the MoU, the AMF and NFA agree to provide assistance "in any matters falling within their competence." These arrangements should evidence sufficient cooperation authority between the Commission and NFA, on the one hand, and the AMF on the other hand, although the Commission or NFA may wish to seek informal confirmation of this from the AMF.

The Commission and NFA may also wish to pursue an arrangement with the French banking regulator, the Autorité de Contrôle Prudentiel (the "ACP"), which is SG's home-country prudential regulator. An arrangement could be modelled on the ACP's MoU with the U.S. Federal Reserve.[22] This MoU provides for mutual cooperation and the exchange of information. As SG's prudential regulator, the ACP will certainly need to be involved in certain aspects of Title VII's application to SG. French law permits the ACP to enter into cooperation agreements with other regulators.[23] Moreover, the transmission of information under the ACP MoU explicitly does not trigger the application of any French Information laws.[24] Finally, we note that there are also international treaties to which the U.S and

[20] Administrative Agreement, dated June 6, 1990, between the Commission and the AMF, which provides for mutual recognition and information sharing to facilitate monitoring and compliance matters related to the mutual recognition of intermediaries and products.

[21] Memorandum of Understanding, dated October 14, 2010, between the NFA and the AMF concerning the exchange of market surveillance and financial regulatory information.

[22] Memorandum of Understanding dated May 19, 2004, between the U.S. Federal Reserve and the French Prudential Control Authority concerning mutual cooperation and the exchange of information for banking supervision and prudential controls.

[23] *See,* Article L. 632-7, I of the French Monetary and Financial Code ("FMFC") allowing the ACP and AMF to enter into cooperation agreements for the exchange of information with non-EU regulators.

[24] *See,* (a) FMFC Article L. 511-33, para. 2, which sets out the general principle of non-enforceability of banking secrecy upon the ACP; (b) FMFC Article L. 632-14 providing that banking secrecy cannot be enforced with regard to non-EU banking supervisory authorities acting in the context of cooperation treaties or agreements executed with the ACP and (c) FMFC Article L. 612-24, para. 2 and L. 612-25 and Article 38, para. 3, preventing any individual from opposing the transfer of personal data relating to him or her, whenever such transfer is in response to a legal obligation.

France are party that the Commission and NFA may rely upon to request information from a foreign regulator.[25]

Registration of Principals. As you are aware, the principals of a swap dealer applicant must register along with the applicant itself. The Commission's definition of principal includes directors. While we understand that this has traditionally been a requirement of the Commission's registration process, in the context of a large, universal global bank like SG, the requirement is overbroad. Directors of global organizations such as SG are not engaged in the day to day administration of any one business activity such as its swap business, they do not directly supervise people engaged in the swap business and, in general, are justified in delegating that direct oversight to the management of the business line. Nevertheless, whether registered or not, a director is theoretically liable for the corporation's misconduct, as a controlling person or even an aidor and abettor if it takes direct action which violate applicable laws or regulations, although enforcement actions against directors are rare. SG thinks that the persons actually responsible for the direct supervision of a dealer's swap business should be the only ones who register as principals. We respectfully request that the Commission consider revising its definition of principal accordingly. If principal registration is viewed by the Commission as a deterrent for misconduct, it will serve as a better deterrent if registration is of the persons directly supervising the business.

Representations about Statutory Disqualification. Form 7-R also requires representations on the statutory disqualification status of associated persons that may be difficult for SG to make accurately and thus might result in an inadvertent misrepresentation. Form 7-R requires a swap dealer applicant to agree that it will not permit any person associated with it who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the applicant "if the applicant knows, or in the exercise of reasonable care should know, of the statutory disqualification."[26] There are individual privacy issues in some countries that make it difficult to collect information about individuals. Moreover, because a substantial number of our salespersons are in countries with differing foreign criminal and regulatory legal regimes, it is difficult to determine whether a person is statutorily disqualified and what standards apply in making this determination. SG is concerned that it cannot unequivocally represent the statutory qualification status of all our associated persons without guidance

[25] *See, e.g.,* (a) The Treaty on Mutual Legal Assistance in Criminal Matters between the U.S. and France executed November 29, 2001, (b) The Agreement on Mutual Legal Assistance between the European Union and the United States of America between the European Union and the United States executed on June 25, 2003 and (c) The International Organization of Securities Commissions (IOSCO) Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, dated May 2012, to which the AMF, the SEC and the CFTC are all party.

[26] *See* Form 7-R at page 39.

from the NFA or Commission on how, or whether, to apply the Form's U.S. legal concepts on a cross-border basis.

For this same reason, our principals based outside of the U.S. may have difficulty answering the questions on Form 8-R regarding their personal disciplinary, criminal and regulatory histories (if any). Answering wrongly may give rise to civil or criminal penalties, so there is great hesitancy to complete these forms. Persons within SG are understandably reluctant to commit SG and themselves to registration given this lack of clarity. SG respectfully requests that the CFTC or NFA provide guidance or clarity on these issues, and also on whether a swap dealer applicant is required to make an independent background check on an associated person in a country even when there is no established manner in which to do so. The Commission could consider a substituted compliance regime for determining statutory disqualification status, which would provide more clarity to persons registering as principals.

Finally, Form 7-R requires an applicant such as SG to provide its disciplinary history going back indefinitely. SG was established in 1864. It is simply not possible to provide a disciplinary history going back almost 150 years, and there is no reason why such information should be relevant to the Commission or NFA. The Commission or NFA should provide applicants with a clear date before which information is not required. We see no reason why information should be required to go back more than ten years, which would be similar to the standard used by the SEC for registration of broker-dealers. If this look-back period is not acceptable, the Commission should provide another concrete date in the Form 7-R.

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We appreciate having the opportunity to comment. We hope these comments have been constructive and will help the Commission in the finalization of its important Proposals. SG would be pleased to meet with the Commission at any time to discuss our comments.

Respectfully,

Laura Schisgall
General Counsel

Mark Kaplan
Chief Operating Officer

cc: Mr. Dan M. Berkovitz
Ms. Jacqueline Hamra Mesa
Mr. Frank Fisanich
Ms. Natalie M. Radhakrishnan

Appendix A

SG's Suggested Language for Amending Form 7-R

Set forth below, in bold, is SG's suggested language for amending Form 7-R and a citation as to where the relevant provisions appear in the Form.

- Form 7-R, page 2: "Compliance with Disclosure Requirements of Another Regulatory Body is not Sufficient. With some exceptions, which are described below in the Regulatory and Financial Disclosures sections, if any question requires the provision of information, that information must be provided, **subject to any applicable blocking, privacy or secrecy laws**. In particular, if a question in the Disciplinary Information Section requires disclosure of a matter, the question must be answered "Yes" and additional documents must be provided even if the matter has been disclosed to another regulatory body such as FINRA, an exchange or a state regulator. Similarly, disclosure is required even if another regulatory body does NOT require disclosure of the same matter."

- Form 7-R, page 40: "By filing this Form 7-R, the applicant agrees that such filing constitutes the applicant's...certification that...**subject to any applicable blocking, privacy or secrecy laws,** the applicant's books and records will be available for inspection by the CFTC, the U.S. Department of Justice ("DOJ") and NFA for purposes of determining compliance with the Act, CFTC Regulations and NFA Requirements;"

- Form 7-R, page 40: "By filing this Form 7-R, the applicant agrees that such filing constitutes the applicant's...certification that...**subject to any applicable blocking, privacy or secrecy laws,** such books and records will be produced on 72 hours notice at the location in the United States stated in the Form 7-R or, in the case of an IB, CPO or CTA confirmed as exempt from registration pursuant to CFTC Regulation 30.5, at the location specified by the CFTC or DOJ, provided, however, if the applicant is applying for registration as an FCM, SD, MSP or RFED, upon specific request, such books and records will be produced on 24 hours notice except for good cause shown;"

- Form 7-R, page 40: "By filing this Form 7-R, the applicant agrees that such filing constitutes the applicant's...certification that...**except as the applicant t has otherwise informed the NFA in writing,** the applicant is not subject to any blocking, privacy or secrecy laws which would interfere with or create an obstacle to full inspection of the applicant's books and records by the CFTC, DOJ and NFA."

- Form 7-R, page 40: "By filing this Form 7-R, the applicant agrees that such filing constitutes the applicant's...certification that...**subject to any applicable blocking, privacy or secrecy laws,** the failure to provide the CFTC, DOJ or NFA with access to its books and records in accordance with this agreement may be grounds for enforcement and disciplinary sanctions, denial, suspension or revocation of registration, withdrawal of confirmation of exemption from registration as an IB, CPO or CTA pursuant to CFTC Regulation 30.5, and denial, suspension or termination of NFA membership;

- Form 7-R, page 40: "By filing this Form 7-R, the applicant agrees that such filing constitutes the applicant's...certification that...the applicant for registration shall provide to NFA copies of any audit or disciplinary report related to the applicant for registration issued by any non-U.S. regulatory authority or non-U.S. self-regulatory organization and any required notice that the applicant for registration provides to any non-U.S. regulatory authority or non-U.S. self-regulatory organization and shall provide these copies both as part of this application and, **subject to any applicable blocking, privacy or secrecy laws,** thereafter immediately upon the applicant for registration's receipt of any such report or provision of any such notice;"