Group Public Affairs

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Regulatory Developments

LLOYDS BANKING GROUP

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David A Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

RE: RIN number 3038-AD57: Cross-Border Proposed Interpretive Guidance

Dear Secretary Stawick:

Lloyds Banking Group ('the Group') welcomes the opportunity to respond to the Commission's July 2012 proposed Cross-Border Interpretive Guidance Order. The Group is a UK headquartered bank focusing primarily on retail and commercial banking in our domestic market. We believe our position is somewhat different from the majority of other respondents; however this does perhaps illustrate the wide-reaching implications of the Commission's proposals.

The Group understands the Commission's mandate to develop a regulatory environment that will ensure the protection of US investors and the US financial system. However, as a non-US person, we note in particular, Section 722(d)(i) of Dodd-Frank Act (the "Act") which states that the regulation "shall not apply to activities outside of the United States unless those activities have a direct and significant connection with activities in, or effect on, commerce of the United States." We are concerned that the proposed approach is not proportionate, potentially bringing non-systemic activity into the purview of US Agencies. While this is challenging for non-US firm, it will also (we expect) prove to be resource intensive for the Agencies. We also note that the number of regulatory proposals emanating from a range of jurisdictions present a significant complexity risk for both the industry and supervisors.

Substituted Compliance

The Group highlighted in our response to the Commission's proposed Exemptive Order that we welcome the Commission's determination on what will constitute substituted compliance and we would like to discuss this in greater detail. The UK has a robust

regulatory system which, like the US, continues to evolve with the purpose of protecting investors and ensuring financial stability.

We would support further communication between European and US regulators on the issue of substituted compliance. If we are going to avoid "potentially conflicting regulations"[1] and the consequential problems that arise, regulators must be sufficiently engaged to establish "consistent international standards."[2] This level of dialogue is crucial if substituted compliance is going to be used and relied upon. Moreover, we consider it critical that the implementation periods for the Commission's regulations with respect to non-US swap dealers be harmonized with the requirements of EU/UK legislation. Otherwise, non-US institutions may be faced with an unattractive choice to either restrict their business activities or to operate under parallel, unaligned regulatory regimes.

If a comparable EU/UK regulatory system is in place or is in the process of being implemented, the Commission should determine that a non-US swap dealer's compliance with the UK supervisory regime constitutes substituted compliance.

International Comity

Throughout the proposed rule, references are made to the principles of international comity. We urge the Commission to focus its jurisdiction in line with those principles to mitigate the risk of overlapping and inconsistent regulation emerging. Application of Commission jurisdiction in all transactions involving a US person regardless of the location of the transaction would stretch the Cross Border Guidance to exceed the strictures of the statutory language of Section 2(i) of the Commodity Exchange Act.

Central booking model

Clarity would be helpful with respect to non-US institutions employing central booking models. The corresponding range of scenarios does not adequately address whether a non-US central booking entity (not acting as principal to swaps with US Persons) centrally managing the market risk for both (i) swaps with an affiliated non-US SD, and (ii) other non-US related swaps activities, would itself have to register as a SD. We believe to require registration in such instances appear to go beyond the scope of Section 722 of the Act. Swap transactions where a non-US affiliate, branch or subsidiary is the entity engaging in the solicitation or negotiation of a swap booked in the non-US parent should fall outside of the scope.

Transaction level requirements

The ambiguity of transaction level requirements applying to swaps between non-US SD and non-US branches of US SDs needs to be addressed. These suggest that transaction level requirements will apply, though later guidance states that non-US SDs do not need to comply with transaction level requirements for swaps with non-US branches of US persons.

[1] *See* Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, 77 Fed. Reg 41229, July 12, 2012.
[2] 77 Fed. Reg. 41229

US branches of non US Persons

We request clarity on the classification of a US branch of a non-US person. Based on the guidance a non-US branch of a US person appears to be classified as a US person, this is understandable given that the branch is not a legal entity in its own right. The guidance suggests that a US person also includes a non-US legal entity that has its principal place of business in the US, which would mean that the US branches of non-US entities are US persons, rather than non-US persons. We presume that the Commission intended to address the situation of an offshore corporate shell that conducts almost all its activities in the US, but the term "principal place of business" is vague and can lead to differing interpretations. For example, there may be instances where a non-US entity derives the greater part of its revenues from activities in the US; it is not clear whether this means that the non-US entity's "principal place of business" is in the US.

Additionally, we note that an existing SD's current due diligence approach may not secure sufficient information to determine the status of a customer with regard to "principle place of business". This appears to require a non-US SD to review all its counterparty due diligence files to ascertain where counterparties have their principal place of business; this would place an administrative burden on a non-US SD that is not commensurate with the regulatory benefit.

Consistent interpretation should be applied. A US branch of a non-US person should itself be considered a non-US person. This approach, as a part or extension of such non-US person, will not negatively impact the US economy because dual regulated entities carry two layers of protection. Non-US entities are subject to home country regulatory oversight through the parent, while the US branches will be subject to host country, i.e., US regulatory supervision.

Anti avoidance provisions

While the core rules in this regard reside outside of the Commission's proposed cross border guidance, such provisions are directly referenced and relevant. In determining whether an entity has to register as a MSP, swap positions of affiliated registered SD or MSP can be excluded where no recourse to the affiliated registered SD or MSP exists. This contrasts to the SD rules where there is no similar exclusion, but rather requires an entity to take into consideration SD positions entered into by an affiliate controlling, controlled by or under common control with the entity at issue. This lack of exclusion will result in entities with swap dealing activities materially below *de minimis* limits having to register as a SD. For example, an entity with only one swap dealing activity in a year could be required to register, a result which would seem overly burdensome and costly for such an entity. For some banks this may require multiple costly SD registrations.

We discussed above the lack of clarity relating to central booking models for non-US Persons. In the short term, this removes the ability to evaluate alternative more cost effective booking models. It is critical that this issue is addressed to avoid unnecessary registration; which will be burdensome for firms and for the Agencies.

The Commission has robust enforcement powers which will ensure against avoidance. Therefore there is a rationale for allowing non-US persons to exclude all swaps executed with a SD/MSP. Additionally, the regulations in place will ensure transparency of the

market and compliance as the registered SD/MSP counterparty will be fully within the purview of the Commission.

The Group and the wider industry would welcome a joint Commission and SEC statement on Cross-Border application of Dodd-Frank. This would deliver clarity for the industry and regulators outside the US, and provide the US Agencies with a consistent position.

We would be pleased to discuss our letter with the Commission staff. Please feel free to contact me (Jonathan.Gray2@lloydsbanking.com) or my colleague Cat Fereday (Cat.Fereday@lloydsbanking.com).

Yours sincerely,

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