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August 27, 2012

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

Re : Proposed CFTC Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act(RIN 3038-AD57)

The Korea Federation of Banks (KFB) is a bankers' association that represents and promotes the interests of the Korean banking industry as a whole. Our membership comprises banks and other financial institutions, both domestic and international, operating in Korea.

Thank you for providing industry stakeholders with the opportunity to comment on *"Proposed CFTC Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act"* (the "**Cross-Border Guidance**"). While we understand that the intent of the CFTC is to tighten the regulation on the over-the-counter derivatives market, the regulation should be applied to overseas countries based on the principles of the international coordination and comity, and carefully addressed taking the difference in the laws and financial markets of each country into account. The following are our comments on the proposed guidance.

Concern about potential conflict with Korean domestic laws

We are concerned that application of US laws on Korean financial institutions triggered by registration requirements of swap dealers could potentially conflict with Korean local laws. We are particularly concerned that

submitting trade data to US regulators by Korean financial institutions would not be permitted unless there is a specific consent from the customers under the Real Name Act in Korea.

If the CFTC wishes to apply US laws to Korean financial institutions, it needs to confirm that such measures would not be in conflict with local Korean laws.

Should there be a conflict with Korean law, we suggest that the CFTC go through a full consultation with the Korean regulator to determine whether it is justifiable or practical to amend Korean laws or if it is the US requirement that is unreasonable from the standpoint of international comity. If it is mutually agreed that Korean laws need to be amended, then application of the CFTC rules needs to be delayed to allow this revision. Even better would be for regulation of cross-border transactions to be deferred until an internationally consistent approach on how to regulate cross-border transactions has been agreed. We note that such a delay pending the agreement of such an approach has been suggested by leading sovereign bodies.

Moreover, even after legislative change, we believe trade reporting data should be communicated in the form of sharing between national regulatory bodies. We are not in favour of the imposing of duties on non-US financial entities individually.

Suggestion for an Enhanced International Approach to Derivative Regulation

Korean financial institutions are required to observe the laws and regulations of Korean financial regulators. As mentioned above, making it mandatory for Korean entities to follow the CFTC rules as a result of swap dealer registration will subject Korean financial institutions to two sets of different regulations that could be in conflict or inconsistent.

We suggest that a more practical solution of achieving best and consistent international regulatory standards globally are not the cross border application of rules by the CFTC (or any other national regulators). Instead we suggest that a better approach is for global regulators to discuss and agree global standards and criteria for regulation governing over-the-counter derivatives trading, and that each national regulator to enforce those globally agreed standards in the form of national law and regulation. By doing so globally

consistent regulation can be achieved and the integrity and sovereignty of national regulation can be maintained.

To this end global leaders have already taken steps to agree, via the G20, necessary regulatory reforms for OTC derivatives. These reforms are being implemented in South Korea. Should the CFTC wish to propose further (or more defined) regulatory measures internationally, it should be done so with multilateral agreement (such as through global regulatory bodies such as the FSB or IOSCO) in order to avoid inconsistent and overlapping regulatory approaches as well as a complex web of bilateral agreements between market regulators. All of which will have a compounding resource impact on the industry in order to adhere to these rules.

Recommendations on substituted compliance and related processes

The proposed Cross-Border Guidance stipulates that overseas entities eligible for registration will be exempt from regulation for one year if they submit a compliance plan within 60 days after registering as a swap dealer.

The Cross-Border Guidance proposes that the CFTC would make comparability determinations on an individual requirement basis, rather than the foreign regime as a whole when deciding whether to allow substituted compliance by a foreign swap dealer. However, we believe it would be more appropriate to accept substituted compliance comprehensively based on an agreement between regulatory bodies at the national level and any determination should be made based on the comparability of the foreign regime as a whole rather than on a rule-by-rule comparison.

The piece-meal approach proposed in the Cross-Border Guidance would subject a foreign swap dealer to a puzzle of the US and home country regulations which would lead to regulatory conflicts. While entity-level substitute compliance for foreign affiliates of US based swap dealers is the proper approach, the specific requirement that the CFTC must have direct access to data a foreign trade repository is extraterritorial overreach. As stated elsewhere in this letter, access to Korea's trade repository should be based upon intergovernmental agreement and give Korean regulators reciprocal access to data in US trade repositories. The Dodd-Frank Act requires that foreign regulators provide an indemnification letter to the CFTC to access such data. Unless the CFTC is willing to access data in a foreign

trade repository on an equivalent basis, this requirement of the entity-level substitute compliance guidance is blatantly unfair and should be amended.

If the approvals were considered on a rule-by-rule basis as proposed in the Cross-Border Guidance, and the substituted compliance were rejected by the CFTC, overseas financial institutions would need to fulfill the obligations imposed by the CFTC. However, as mentioned above, it would be unreasonable for the CFTC to directly enforce duties on financial institutions outside the US given they will be adhering to G20 consistent Korean derivative regulations..

Therefore, we believe that the CFTC should consult with overseas regulators and decide accordingly whether to accept substituted compliance at the national level (cf using globally agreed standards as a more appropriate 'benchmark'), meaning that financial institutions outside of the US should only be required to follow the (G20 consistent) regulation of their national authorities.

The necessity of delaying the reporting of the compliance plan and the compliance with the rule

In the absence of a uniform regulation on over-the-counter derivatives across nations, requiring financial institutions outside of the US to individually understand the details of the CFTC regulation, compare them with corresponding domestic regulations, and prepare a compliance plan accordingly puts too much burden on such foreign institutions.

Individual financial institutions should only be required to submit substituted compliance plans only after the CFTC and the financial regulators of other nations have reached an agreement on how to approach the substituted compliance issue propose by CFTC in light of the corresponding financial regulations of each nation.

Therefore, we request delaying the requirement for foreign financial entities to register as swap dealers, submit a compliance plan and carry out compliance action with the rules until the CFTC and other international financial authorities form an agreement on an international basis.

Our opinion on how to aggregate the dealing volume of non-US-based affiliates

The proposed rule requires non-US persons to aggregate all the dealing activities of the affiliates under common control located outside of the US when estimating the dealing volume with US persons. If a non-Us person has more than one non-US based affiliate, each affiliate would have to include the notional value of the dealing activities of other affiliates when determining whether the de minimis threshold is met, which then leads to multiple affiliates in the same group being registered as swap dealers.

We believe that if an affiliate in a group is registered as a swap dealer, it would be reasonable to exclude the notional value of dealing swaps entered into by such registered affiliate with US persons from the aggregation of the dealing volume of other affiliates.

Thank you again for the opportunity to comment on the proposed Cross-Border Guidance rule. If you have any questions whatsoever about the comments we made, please do not hesitate to get in touch with us.

Yours sincerely,

Sang-Cheon Ma

Sang-Cheon Ma
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Korea Federation of Banks