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David A Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington DC 20581
The United States of America

Dear Mr Stawick

17 CFR Chapter 1
RIN3038-AD57
Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act

We refer to the above proposed interpretative guidance and policy statement and would like to submit comments of the Hong Kong Association of Banks (HKAB) for the consideration by the Commodities Futures Trading Commission (Commission).

General

Mutual recognition for substituted compliance – We recognize the policy objective of fostering protection against systemic risk and the strong regulatory interest of the Commission in this. In Hong Kong, HKAB members are already conducting over-the-counter (OTC) derivatives activities under the prudential supervision of the Hong Kong Monetary Authority (HKMA) in respect of capital, liquidity and other relevant requirements. However, in view of concerns in the international arena and as an international financial centre, the Hong Kong Government led by the HKMA and the Securities and Futures Commission (SFC), will be introducing specific legislation and regulations on OTC derivatives trading covering mandatory reporting, clearing and trading obligations as well as higher capital and margin requirements for non-cleared derivative transactions. Such regulations will be in line with G20 commitments and are aimed at enhancing the transparency in the OTC derivatives market and reducing counterparty risk and system risks in the financial system.

While HKAB welcomes the proposed recognition of offshore substituted compliance by the Commission, we consider that the Commission should evaluate comparability of a particular foreign jurisdiction based solely on their compliance with G20

commitments. The reason being that G20 commitments represent internationally agreed standards for derivative reforms and that substantial work has already been done and consensus reached by G20 leaders on the reform initiatives, to ensure that they are implemented consistently across all markets in a timely manner. As a result, we strongly believe that any test of "comparability" or "equivalence" by any jurisdiction must be measured solely against the G20 commitments as internationally agreed standards and consensus.

Furthermore, each jurisdiction should implement the G20 commitments in such a way which is appropriate for its market and which should be respected as a matter of international comity. This also means that the test must not be applied in a granular manner.

Specifically, where a foreign jurisdiction is deemed to be in alignment with the G20 commitments, substituted compliance should be permitted for non-U.S. persons at both the entity and transactional requirements as specified by the Commission. Allowing substituted compliance at a transactional level will minimize the impact on client experience as well as operational risk whilst still allowing the Commission to assess adequacy of equivalent protections. Furthermore, in the case for Hong Kong, there would already be mandatory reporting and clearing obligations in the new legislation and regulations which should adequately address such requirements.

The Commission should reject comparability only if it identifies a major gap in foreign regulation against the G20 commitments so severe that with the jurisdiction's overall entity-level or transaction-level regime, as applicable, would give rise to direct and significant risks for the U.S. For the avoidance of doubt, we also believe that any findings of comparability should be made at a jurisdictional level rather than following an application by an individual firm (for example, if Hong Kong was found to be a comparable jurisdiction, where substitute compliance would be allowed, this finding should automatically be available to all firms in Hong Kong – it should not be necessary for each firm to apply to the Commission individually requesting substituted compliance).

In the context of Hong Kong, we would like to reassure the Commission that the financial markets' regulation is on par with international standards and, as explained above, in the context of the OTC derivatives market, its regime will be enhanced in alignment with G20 commitments as mentioned above. Like the Commission, we believe that the HKMA and the SFC have a keen interest in ensuring that the OTC derivatives market maintains an adequate level of transparency to enhance the resilience of the stability of the financial systems bringing benefits to financial markets and the wider economy. On this basis, we suggest that there is strong policy rationale for the Commission to recognize that the regulatory regime of Hong Kong should be deemed as a comparable jurisdiction where substituted compliance at both the entity and transactional level would be allowed.

Accordingly, we would strongly encourage close dialogue and communication between the Commission and the Hong Kong regulators to start this mutual recognition process which will allow substituted compliance immediately, to the maximum extent possible, given Hong Kong's regulatory position even if the Hong Kong reforms are technically not yet fully finalized or in force. Such regulator dialogue would also be conducive to addressing potential inconsistencies or conflicts with respect to the reporting of swap transaction data to Swap Data Repositories (SDR), for example where such reporting might otherwise contravene applicable confidentiality or data privacy laws.

Registration requirement – All swaps of registered swap dealers should be excluded from the aggregation for de-minimis testing to avoid double counting (once for the entity that registers as a swap dealer, and again for each of its affiliates). Otherwise, non-U.S. entities that have little or no swaps business with U.S. counterparties (and, therefore, little or no impact on U.S. commerce) would be forced to register simply because they belong to a banking group where one member of the group is a registered swap dealer.

Scope of reporting – In relation to SDR, we consider that the proposed guidance should be amended to require trades to be reported only if at least one of the parties to the trade is a U.S. person. Specifically, trades between a non-U.S. swap dealer and a non-U.S. counterparty should not need to be reported to recognize the fact that such trades would not have a direct or significant connection with U.S. commerce. Such an approach would go a long way towards mitigating potential conflicts with foreign law.

Extended phase-in – Apart from allowing time for discussions on jurisdiction comparability, a number of areas are unclear and require clarity, including the definition of "U.S. person". The Commission should allow an extended phase-in (of at least 12 months) for firms to build readiness (including collecting data on existing clients and making necessary system modifications) and for international regulators to address conflicts and work toward harmonization.

Extension for registration – For the same reasons as stated above, firms should be given sufficient time for Swap Dealer Registration after the final cross border rules are published. We suggest a minimum lead time of 60 days.

Specific comments

Various issues raised in specific questions put out by the Commission are of concern to HKAB members. We would like to provide further comments on these questions as follows:

Q1. Please provide specific comments regarding the Commission's proposed interpretation of the term "U.S. person."

We have the following concerns with how the "U.S. person" is proposed to be defined:

(a) It is very broad and inconsistent with other regulatory definitions of 'U.S. person', such as the definition in Reg S.

(b) It is not exhaustive (e.g." would include, but not be limited to"). This could suggest that it is subject to retrospective ad hoc modification and means that dealers will never be able to determine conclusively whether a client is, or is not, a U.S. person.

(c) It goes beyond firms' existing knowledge of customers. In particular, the look through requirements require firms to collate data well beyond existing KYC requirements (e.g. whether a trust or estate pays US income tax, or whether a U.S. person indirectly shares liability). Firms do not retain all of this data today in their systems and a data collation exercise on this would be extensive.

(d) It extends to entities guaranteed by a U.S. person. Guarantee needs to be clearly defined. Otherwise there is uncertainty over whether certain arrangements like overdrafts, liens or de minimis ordinary course commercial arrangements could be captured.

Q1a. In the Commission's view, the concerns regarding risks associated with the affiliate group structure are heightened where a U.S. person guarantees (or provides similar support) to a foreign affiliate or subsidiary. In such situations, the risk of the swaps executed abroad are effectively transferred to or incurred by the U.S. person. Or stated differently, the risk of the affiliate's swap transactions have a direct and significant connection to, or effect on, the U.S. person that is the guarantor. Under these circumstances, notwithstanding that the U.S. person may be subject to a robust regulatory regime, its financial stability may be put at risk by activities outside the firm. Accordingly, the Commission is considering, and seeks comments on, whether the term ''U.S. person'' should be interpreted to include a foreign affiliate or subsidiary guaranteed by a U.S. person.

Given that the portfolio of a foreign affiliate and subsidiary are segregated from U.S person, foreign affiliate and subsidiary should be regarded as a non-U.S. person as they are separate legal entities. In particular, we believe that the transaction level requirements should not apply to entities guaranteed by U.S. persons. The reason is that non-U.S. counterparties are likely to be unwilling to agree to legal documents to comply with Dodd-Frank (which could cause complex issues and hinder non-U.S. trade). Guarantees by U.S. persons should not trigger swap documentation requirements, for example.

Should the proposed interpretation be adopted, nevertheless, guarantee needs to be defined in an exhaustive way so that firms know whether they are dealing with an entity "guaranteed" by a U.S. person.

Q1b. Several commenters have suggested that the Commission adopt the definition of "U.S. person" in the SEC's Regulation S.30 Should the Commission interpret the term "U.S. person" in a similar manner notwithstanding that Regulation S has a different focus?

Reg. S definition of US person should be used. Reg. S definition has served the capital markets well and is well established and understood, which would provide much needed legal certainty.

Even if the Reg S definition is not adopted, the definition of U.S. person needs to be made exhaustive (the "includes but not limited to wording" should be deleted). Firms will also need to be given sufficient time to identity which of their clients/customers are U.S. persons after the definition is finalised, particularly if this will require firms to collect additional data from their clients.

Q1c. As an alternative to the proposed interpretation of the term "U.S. person," should the Commission interpret the term to include a concept of control under which 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 so, how should the Commission define the term "controlled by or under common control?"

It is unclear whether having a managing member or general partner who is a U.S. person would result in an entity being deemed a U.S. person even if all the other participants in such entity are non-U.S. persons. Additionally, although it would appear that an offshore commodity pool, pooled account or collective investment vehicle operated by a registered commodity pool operator that is required to be registered as such in respect of other commodity pools should not be considered a U.S. person solely as a result of having a registered commodity pool operator, it would be helpful for further clarification on this.

Q1d. Are there other examples of persons or interests that should be specifically identified as a "U.S. person" in the final interpretive guidance?

The "US person" definition has been substantially broadened as compared to those set out by SEC. In any event, if the Commission rejects using the Reg S definition, then it should adopt a definition that is clear and exhaustive (the "includes but not limited to wording" should be deleted).

Q2. Do commenters agree that in determining whether it is a swap dealer, a non-U.S. person without a guarantee from a U.S. person should consider

whether it is engaged in swap dealing as part of ''a regular business'' only with respect to U.S. persons (as opposed to non-U.S. persons)? Why or why not? In such an analysis, would it generally be feasible for the non-U.S. person to distinguish swap dealing activities with U.S. persons from swap dealing activities with non-U.S. persons and are there any practical difficulties in this approach?

Agree. A non-U.S. Person without a guarantee from a U.S. person should not be considered as a swap dealer if such non-U.S. person does not engage in swap dealing with a U.S. persons as part of its "regular business".

Q3. Please provide comments regarding all aspects of the Commission's proposed interpretation, including particular alternative interpretations the Commission should consider in assessing whether a non-U.S. person should be required to register as a swap dealer or MSP.

Q3a. Do commenters agree that the Commission should determine whether a non-U.S. person, without a guarantee from a U.S. affiliate, is a swap dealer based solely upon the aggregate notional amount of swap dealing activities with U.S. persons as counterparties? Why or why not?

Agree as it is the simplest way to measure. In addition, swaps between two non-U.S. persons, where neither party is guaranteed by a U.S. person, do not have any direct or significant connection to, or effect on, U.S. commerce and so should be excluded from consideration.

Q3b. Do commenters agree that the Commission should determine whether a non-U.S. person is a swap dealer based on the aggregate notional amount of swap dealing activities when the swap dealing obligations of such non-U.S. person are guaranteed by a U.S. person? Why or why not?

No comment.

Q3c. Do commenters agree that in determining whether a non-U.S. person is a swap dealer, the notional amount of swap dealing activities conducted by it and all of its non-U.S. affiliates under common control should be aggregated together? Why or why not? Should the Commission further interpret the phrase ''under common control'' and, if so, how should the Commission define ''common control'' for aggregation purposes? Should the notional amount of swap dealing activities conducted by its U.S. affiliates also be included?

Disagree. Each non-U.S. affiliate is a separate legal entity from its U.S. parent company and so its business should not be related to U.S commerce.
Non US banks should get equivalent relief to that available for U.S. banks.

Also, all swaps of registered swap dealers should be excluded from aggregation for de-minimis testing. Otherwise these swaps would, in effect, be double counted (once for the entity that registers as a swap dealer, and again for each of its affiliates).

Q3d. Are any other aspects of a swap—such as, for example, the place of execution or clearing—relevant to the determination of whether a non-U.S. person is a swap dealer?

No. Only the identity and status of the counterparties should be considered.

Q3e. Do commenters agree that the Commission should determine whether a non-U.S. person is an MSP based solely on its swap positions with U.S. persons as counterparties? If not, why?

No comment.

Q3f. Do commenters agree that, in determining whether a non-U.S. person is an MSP, its swap positions guaranteed by a U.S. person should be attributed to such U.S. person and not the non-U.S. person? If not, why? How should the Commission's determination change when some but not all of the non-U.S. person's swap obligations are guaranteed by a U.S. person?

No comment.

Q3g. Are any other aspects of a swap—such as the place of execution or clearing—relevant to the determination of whether a non-U.S. person is an MSP?

No comment.

Q4. As noted above, the Commission does not propose that a non-U.S. person should include, in determining whether the swap dealer de minimis threshold is met, the notional value of swap dealing transactions with foreign branches of U.S. swap dealers. Noting the risk based, as opposed to activities-based, nature of the MSP registration category and related calculations, the Commission seeks comment on whether a non-U.S. person should include, in determining whether it is required to register as an MSP, its swap positions with foreign branches of U.S. swap dealers.

No comment.

Q5. Under the aggregation description above, a non-U.S. person, in determining whether the de minimis threshold is met, must include the notional value of dealing swaps by its non-U.S. affiliates under common control. The Commission requests comments on whether, to the extent that any such

non-U.S. affiliate is registered with the Commission as a swap dealer, the notional value of dealing swaps entered into by such registered swap dealer should not be aggregated with the notional value of dealing swaps entered into by the other non-U.S. affiliates under common control.

We strongly support this suggestion. To the extent that any non-U.S. person is registered with the Commission as a swap dealer, the notional value of swaps entered into by such registered swap dealer should not be aggregated with the notional value of swaps entered into by other non-U.S. affiliates under common control. Otherwise, non-U.S. entities that have little or no swaps business with U.S. counterparties (and, therefore, little or no impact on U.S. commerce) would be forced to register simply because they belong to a banking group where one member of the group is a registered swap dealer.

Q7. Should the Commission consider any other types of swap dealing transactions by non-U.S. persons to determine whether a non-U.S. person is a swap dealer? If so, which ones?

No. Only swaps with U.S. persons as counterparties should be considered.

Q8. Do commenters agree that the Commission should exclude the swap dealing transactions of a non-U.S. person from the determination of whether such non-U.S. person qualifies as a swap dealer, where the counterparty to such dealing swaps are non-U.S. persons (guaranteed or not)? Should the Commission exclude swap obligations in excess of a capped guaranty provided by a U.S. person (i.e., a guaranty that limits the U.S. person's liability to a capped or maximum amount)? How should the Commission account for the reduced risks assumed by a U.S. person guaranteeing certain or all swaps of a particular non-U.S. person under that non-U.S. person's master agreements with non-U.S. counterparties, where the U.S. person's liability under the guarantee is limited?

We agree that that the Commission should exclude the swap dealing transactions of a non-U.S. person from the determination of whether such non-U.S. person qualifies as a swap dealer, where the counterparty to such swap dealing is a non-U.S. person. Swaps between two non-U.S. counterparties have no direct or significant effect on U.S. commerce and so should not be included in the determination of whether an entity needs to register as a swap dealer.

Q9. Can a limited designation registration as provided for in the statutory definitions of the terms ''swap dealer'' and ''major swap participant'' be used to address the Commission's regulatory interests under the Dodd-Frank Act with respect to cross-border swap activities? If so, how?
No comment.

Q10. Please provide comments regarding all aspects of the Commission's proposed grouping of requirements into Entity-Level and Transaction-Level Requirements and application of the same to U.S. and non-U.S. persons as discussed above.

Agree with the separation into entity-level and transaction-level requirements.

We would also point out that the lack of final cross border rules (including the definition of U.S. person) before the implementation deadlines means non-US persons can at best guess what requirements they need to implement in time. We would therefore suggest that extended phase-ins (of 12 months extra) are granted, to take into account the new information firms may be required to collect for all existing clients, and IT infrastructure build.

We would also suggest that the deadline for swap dealer registration should be postponed until 60 days after the final cross border rules are published because, otherwise, entities will not know whether they need to register by virtue of the aggregation rules.

Q11. Are there any Entity-Level Requirements that should be reclassified as Transaction-Level Requirements, or vice versa? In particular, the Commission is interested in comments on whether portfolio reconciliation and compression requirements, as central risk mitigation and back-office functions, could or should be categorized as entity-level requirements. Similarly, the Commission is interested in comments on whether clearing and margin and segregation for uncleared swaps should be categorized as Entity-Level requirements.

Q11a. Should the Commission group the Entity-Level Requirements and Transaction-Level Requirements differently for swap dealers and MSPs? If so, how and why?

The requirements should be grouped in the same way for swap dealers and MSPs.

Q11b. Should the real-time reporting and trade execution requirements be treated in the same manner as the external business conduct standards?

By this, presumably they mean that they would be disapplied to all swaps involving non-US persons (including those with US guarantees or acting as conduits for US persons). We support this approach as it would remove difficulty of trying to determine which non-US counterparties benefit from US guarantees or act as conduits for US persons.

Q12 Please provide specific comments regarding the proposed application of the Transaction-Level Requirements to swaps with counterparties that are U.S. persons. Should the Commission permit substituted compliance for swaps between a non-U.S. swap dealer or non-U.S. MSP with a U.S. person?

Substituted compliance should be available at a transactional level for non-US entities dealing with US persons. This would prevent duplicated requirements which impact the client experience and introduce operational risk whilst still allowing the Commission to assess adequacy of equivalent protections. This is consistent with international comity principles and G20 commitments.

When assessing the availability of substituted compliance, the Commission should compare the relevant foreign regulatory requirements solely against the G20 commitments and allow substituted compliance where the G20 commitments have been met, as the G20 commitments represent the internationally agreed standards for derivatives reform.

Any assessment of comparability will require communication between local regulators and the CFTC (including signing a MoU). It is uncertain how long will it take to get a decision about whether or not a particular regulation is sufficiently comparable to Dodd Frank. If an application for substitute compliance has been made, firms should not have to comply with the Dodd-Frank requirements for which substituted compliance is being sought whilst the application is being reviewed by the Commission. If the application is rejected, a reasonable amount of time needs to be given for firms to comply.

Where local derivatives reforms are in the process of being implemented, but will not be finalised by the compliance date for Dodd-Frank, the Commission should consider developing an interim process that takes into account the development of "comparable" legislation and proposed regulations.

What happens when comparability is rejected- is there a phase in? What happens if there is no relevant MoU between regulators: when will firms know this and will there be a phase-in when the fact of a MoU or lack of MoU is made public? Is it existing MoUs only (that apply here) and where are they published? Guidance is required here.

Q13. Please provide specific comments regarding the proposed application of the Transaction-Level Requirements to swaps with counterparties that are non-U.S. persons.

No comment.

Q14. Market participants may not be able to determine, in certain cases, whether their counterparties are U.S. persons, non-U.S. persons with a guarantee from U.S. persons, or non-U.S. persons without guarantees. How should the Commission address this issue?

Adopting the Reg S definition of U.S. person would greatly assist, as would ensuring that "guarantee" is defined clearly and exhaustively.

Also, it would be provide certainty to firms if a swap dealer / MSP registration list is published and updated for public access.

Q15. Please provide comments regarding the Commission's proposed interpretation with respect to non-U.S. swap counterparties whose swap obligations are guaranteed by U.S. persons. Should the interpretation for swaps between non-U.S. swap dealers or non-U.S. MSPs and non-U.S. counterparties whose swap obligations are guaranteed by U.S. persons be different than with respect to swaps between non-U.S. swap dealers or non-U.S. MSPs and U.S. persons (e.g.,should fewer Transaction-Level Requirements apply)? If so, how (e.g., which Transaction-Level Requirements should apply)? Should the Commission not permit substituted compliance with respect to the Entity-Level and Transaction-Level Requirements in connection with transactions with non-U.S. persons?

Q15a. Should the Commission permit substituted compliance for some requirements but not others? If so, which ones? Should the applicable requirements be different for non-U.S. swap dealers as compared to non-U.S. MSPs?

No comment.

Q16. For Entity-Level Requirements, should the Commission not permit substituted compliance for U.S. persons?

No comment.

Q17. The Commission is aware that some non-U.S. swap dealers or MSPs may be prohibited from reporting swap transaction data to an SDR as a result of their home country's privacy laws, especially with respect to such swap dealer's or MSP's swaps with non-U.S. persons. How should the Commission address the application of the SDR Reporting requirement with respect to these swaps? Should the Commission address the application of such requirements differently with respect to non-U.S. swap dealers and non-U.S. MSPs?

It is suggested substituted compliance should be permitted in this case. Otherwise, the Commission should address the application of such requirements differently.

A sensible resolution to conflicts with foreign law must be achieved by dialogue between the Commission and the relevant foreign regulators.

In relation to SDR, we would encourage amending the proposed guidance so that trades only need to be reported if at least one of the parties to the trade is a U.S. person. In particular, trades between a non-U.S. swap dealer and a non-U.S. counterparty should not need to be reported because such trades

would not have a direct and significant connection with U.S. commerce. Adopting this proposal would go a long way towards mitigating potential conflicts with foreign law.

In addition, providing a 12-month phase in for all requirements would give international regulators time to address conflicts and work toward harmonization. In any case, where Title VII requirements directly conflict with those of a non-US swap dealer's home jurisdiction, substituted compliance should be allowed.

The lack of final cross border rules (including the definition of "U.S. person") before the swap dealer registration and External Conduct of Business implementation deadlines means non-US persons can at best guess whether they are required to register as a swap dealer at all and, if so, the requirements to implement in time. The implementation dates are already challenging (firms may have to implement twice: once now, based on assumptions, and once to remediate when there are final rules.). A number of areas remain unclear. For example, there are complex issues where clients do not provide requisite information.

Extended phase-ins (of 12 months extra) are required, to take into account the new information firms may be required to collect for all existing clients, and IT infrastructure build.

The deadline for Swap Dealer registration should be postponed until 60 days after the final cross border rules are published.

Q18. The Commission seeks comments concerning the proposed disapplication of the external business conduct standards to swaps involving non-U.S. persons. Would it be consistent with the expectations of non-U.S. persons to not apply these requirements to swaps with their local swap dealer, irrespective of whether such dealer is a foreign- or U.S.-based person? Should such requirements apply only to swaps involving the foreign branches or affiliates of a U.S.-based swap dealer?

We support the proposed disapplication of the external business conduct standards to swaps involving non-U.S. persons. In our opinion, non-U.S. persons would not expect these requirements to apply to swaps with their local swap dealer, irrespective of whether such dealer is a foreign or U.S.-based person.

Q19. Should the Commission interpret section 2(i) so as to not apply the Transaction-Level requirements to the foreign branches of U.S.-swap dealers operating in the emerging markets? If so, is it appropriate to condition eligibility for such an exception in the manner discussed above? Should the Commission permit a higher or lower percentage of swaps to be executed

through foreign branches of U.S. registrants in emerging market jurisdictions without comparable regulation? If so, why and what percentage would be appropriate?

Emerging Markets relief is available for US firms but not non-US firms. The relief should be available to all.

Q20. With respect to the exception for foreign branches of a U.S. swap dealer operating in the emerging markets with respect to swaps with a non-U.S. person guaranteed by a U.S. person, should the Commission change the baseline from the aggregate notional value of a firm's swap activities to $8 billion (or certain fixed numerical threshold) so as to not disadvantage small swap dealers?

No comment.

Q21. The Commission requests comment on its proposed approach of applying the Transaction-Level Requirements to a conduit's swaps as if counterparty were a non-U.S. person that is guaranteed by a U.S. person (i.e., Transaction-Level Requirements will apply, with substituted compliance permitted).

No comment.

Q22. The Commission requests comment on its proposed definition of "conduit." Are the three prongs of that definition appropriate? If not, how should they be modified? Should the second prong include language that limits application of the conduit test to "regular" inter-affiliate transactions moving economic risk, in whole or in part, to the United States. Should the definition of conduit distinguish between different types of counterparties or registration status of such counterparties?

The definition of "conduits" is unclear and, therefore, it is unlikely to be possible to identify "conduits" as defined in the proposed guidelines. Clients are unlikely to represent and warrant that they are not a conduit (as they are unlikely to understand the concept).

There is a lack of rationale for rules in this area because the registration rules will capture conduits if this is the purpose for establishing the conduit. If a conduit is acting for a US person in relevant activities, they should be regulated for that activity already.

Conduits proposals should be removed; the registration requirements should suffice. If the proposals are to remain, "conduit" needs to have a precise definition so that firms are able to determine whether or not a counterparty is a "conduit".

Q23. The Commission requests comment on: (i) The prevalence of cross-border inter-affiliate swaps and the mechanics of moving swap-related risks between U.S. and non-U.S. affiliated entities for risk management and other purposes; (ii) risk implications of cross border interaffiliate conduit swaps for the U.S. markets; and (iii) specific means to address the risk issues potentially presented by cross-border conduit arrangements.

No comment.

Q24. The Commission proposed antievasion provisions in proposed rule 1.6 of the product definitions joint rulemaking with the SEC.121 To what extent would inter affiliate conduit transactions be undertaken for purposes of evasion as described in proposed rule 1.6?

No comment.

Q25. The Commission requests comments on whether substituted compliance should be permitted for swaps entered between a foreign branch of a U.S. person with another foreign branch of a U.S. person.

No comment.

Q26. Please provide comments regarding the Commission's substituted compliance proposal, including the appropriate standard and degree of comparability and comprehensiveness that should be applied to make such determination.

Industry associations and local regulators can be used to reduce workload in this area, but they will need sufficient time to coordinate industry. A further 12 months (minimum) relief is required.

When assessing the availability of substituted compliance, the Commission should compare the relevant foreign regulatory requirements against the G20 commitments and allow substituted compliance where the G20 commitments have been met, as the G20 commitments represent the internationally agreed standards for derivatives reform.

What happens where home state rules change and a firm has relied on substitute compliance? It will require time to update.

We also believe that any findings of comparability should be made at a jurisdictional level rather than following an application by an individual firm (for example, if Hong Kong was found to be a comparable jurisdiction, where substituted compliance would be allowed, this finding should automatically be available to all firms in Hong Kong – it should not be necessary for each firm to apply to the Commission individually requesting substituted compliance).

Q27. What are some of the factors or elements of a supervisory program that the Commission should consider in making a comparability finding?

As mentioned above, compliance with the G20 commitments should be the sole determining factor.

Q27a. Should the Commission take a different approach with respect to swap dealers as compared to MSPs?

No. Same approach should be applied.

Q28. How should the Commission address potential inconsistencies or conflicts between U.S. and non-U.S. requirements with respect to the oversight of non-U.S. swap dealers and non-U.S. MSPs?

The sole determining factor should be whether the non-U.S. requirement complies with the G20 commitments. Regulatory conflicts should be resolved by agreement between the Commission and the relevant foreign regulator.

Q29. Many foreign jurisdictions are in the process of implementing major changes to their oversight of the swaps market. Assuming that a foreign jurisdiction has adopted swaps legislation but has yet to finalize implementing regulations, should the Commission develop an interim process that takes into account the development of "comparable" legislation and proposed regulations?

We agree that such an interim process should be developed so that substituted compliance is available even where a foreign jurisdiction has started, but not yet completed its implementation of the G20 commitments.

Q30. How should the Commission ensure that prior comparability determinations remain appropriate over time?

The Commission will need to conduct periodic reviews of previous comparability determinations. However, if a foreign jurisdiction's rules change and, as a result, the Commission decides to withdraw a finding of comparability, the Commission will need to ensure that the market is given sufficient notice of such withdrawal.

Q31. Please provide comments regarding all aspects of the Commission's interpretation of CEA section 2(i) with respect to the proposed application of the Transaction-Level Requirements. The Commission is particularly interested in commenters' views on the impact on U.S. persons as a result of the proposed application of the Dodd-Frank Act's trading requirements.

No comment.

Q32. What, if any, competitive or economic effects on U.S. commerce, including U.S. persons, should the Commission consider when interpreting CEA section 2(i)? What, if any, competitive or economic effects on non-U.S. persons should the Commission consider when interpreting CEA section 2(i)?

No comment.

Questions for Order

1. *Please share your views regarding the Commission's proposed effective date for the relief set forth in the Proposed Order. Should the expiration of the effective date be extended or shortened?*

   No comment.

2. *Should the Commission permit swap dealer and MSP registrants to conditionally de-register following the expiration of the effective date of the Proposed Order? If so, under what conditions should the Commission allow de-registration?*

   No comment.

3. *Should the Commission permit swap dealer and MSP registrants to transfer their registration to a majority-owned affiliate or subsidiary? If so, under what circumstances should the Commission allow such a transfer?*

   No comment.

We much value the opportunity given to provide comments to the Commission. Should the Commission have any questions regarding this letter, please let me know.

Yours sincerely

Ronie Mak
Secretary

c.c. Hong Kong Monetary Authority (Chief Executive)