February 1, 2013

By Electronic Mail

David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: CFTC, Further Proposed Guidance Regarding Compliance With Certain Swap Regulations (RIN 3038-AD85)

Dear Mr. Stawick:

Mitsubishi UFJ Financial Group, Inc. ("*MUFG*", "*we*" or "*us*", as applicable), appreciates the opportunity to comment on the above-referenced Further Proposed Guidance Regarding Compliance With Certain Swap Regulations (the "*Proposed Guidance*") issued by the Commodity Futures Trading Commission (the "*Commission*"). MUFG is a non-U.S. banking organization chartered under the laws of, and with its principal place of business in, Japan, and has a number of direct and indirect subsidiaries (and investments in other entities) that are organized and/or have their principal places of business around the world, including in the United States. Two of these subsidiaries have been provisionally registered as swap dealers as of December 31, 2012: The Bank of Tokyo-Mitsubishi UFJ, Ltd. and Mitsubishi UFJ Securities International plc.

As the parent of two registered swap dealers and a number of U.S. and non-U.S. subsidiaries that are not registered swap dealers, the Commission's ultimate

approach to aggregation in the global context is extremely important to us.[1] In that regard, we very much appreciate the relief the Commission has provided to U.S. banking subsidiaries of foreign banks, allowing them to calculate their de minimis exception without counting the activities of their foreign affiliates, or the U.S. branches of such foreign affiliates, in certain circumstances.[2] We also appreciate the consideration reflected in the approach to aggregation under the final exemptive order (the "*Final Exemptive Order*")[3]. The Final Exemptive Order provides, on a temporary basis, that (a) if a non-U.S person was engaged in swap dealing activities with U.S. persons on the effective date of the Final Exemptive Order (i.e., December 21, 2012), it should not be required to aggregate the swap dealing activities of their U.S. affiliates[4] and that (b) if a non-U.S. person was engaged in swap dealing activities with U.S. persons as of the effective date of the Final Exemptive Order and has at least one affiliate that is a registered swap dealer, it is not required to aggregate non-U.S. affiliates that either are

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1 Large, multinational banking organizations, such as MUFG, have complex organizational structures that reflect legal, regulatory and other considerations relating to the various jurisdictions, which considerations are unrelated to the U.S. swap regulations. Global aggregation of swap dealing is difficult or impossible for such organizations without compromising such legal, regulatory and other considerations. A final approach that does not recognize this will lead to discontinuation of activity in affected entities, less competition, and underserved jurisdictions.

2 See CFTC Letter No. 12-61 (Dec. 20, 2012); CFTC Letter No. 12-71 (Dec. 31, 2012) (collectively, the "Letters"). Pursuant to the exemption under the Letters for swaps entered into by an insured depository institution in connection with the origination of loans, our indirect subsidiary, Union Bank, N.A. ("Union Bank") has been able to continue to provide swaps to its customers, with remaining swap activity that does not fit that exemption falling well below the de minimis threshold as determined on a stand-alone basis. The issues addressed by this letter are similar to those that were faced by Union Bank insofar as certain market participants could be saved the significant burdens and costs of administering an aggregate measure of swap dealing activity, and potentially being required to register as a swap dealer, without compromising the anti-evasion concerns served by aggregation.

3 Final Exemptive Order Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 858 (Jan. 7, 2013).

4 We note that certain entities discontinued swaps activities with U.S. persons on or before October 12, 2012 as a result of regulatory uncertainty. We understand the purpose of this provision is to prevent the later establishment of new swap dealing entities that would fall under the de minimis exception. We therefore believe that entities that were not engaged in such activity on December 21, 2012 because they *discontinued* that activity on or before October 12, 2012 as a result of regulatory uncertainty should be treated as having been engaged in swap dealing activities with U.S. persons on the effective date of the Final Exemptive Order.

registered swap dealers or were engaged in swap dealing activities with U.S. persons as of the effective date of the Final Exemptive Order. Effectively, these provisions allow a non-U.S. person to continue its activities, subject to its own stand-alone de minimis threshold, without considering the activities of its affiliates as long as they were not established as a way to avoid the de minimis exception and the large swap dealers within the organization register as such. We believe that the relief from aggregation provided in the Final Exemptive Order is appropriate.

To the extent aggregation is required in some form under the Commission's final interpretive guidance or rules for the purpose of calculating whether a non-U.S. person has exceeded the de minimis threshold under Section 1.3(ggg)(4)(i) of the Commission's regulations adopted by a release issued jointly by the Commission and the Securities and Exchange Commission (the "*Entity Definitions Release*")[5], however, we are concerned that the aggregation requirements will increase costs and burdens significantly for non-U.S. market participants, with no corresponding benefits to protection of the markets or other market participants.

The specific issue on which we respectfully request the Commission's consideration under this letter relates to common ownership interests in a joint venture entity.[6] In particular, under certain circumstances, two investors could be deemed to satisfy the definition of "control"[7] with respect to the same non-U.S. person, notwithstanding that only one of those investors controls and operates the investee non-U.S. person as a practical matter, consolidates the investee in its financial statements

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5 Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant", 77 Fed. Reg. 30596 (May 23, 2012).

6 MUFG may submit additional comments regarding the Proposed Guidance through industry groups and other organizations in which MUFG is involved, and this letter is not intended to focus on discussing circumstances in which aggregation may be appropriate between a non-U.S. person and other persons generally (including, U.S. persons and persons registered as swap dealers). In addition, this letter is not intended to address whether a non-US. person should be required to register as a swap dealer based on the aggregate notional amount of swap dealing activities that include transactions with non-U.S. persons when the swap dealing obligations of such non-U.S. person are guaranteed by a U.S. person.

7 For purposes of Section 1.3(ggg)(4)(i) of the Commission's regulations, "control" is interpreted consistently with Rule 12b-2 under the Securities Exchange Act of 1934 ("*Exchange Act*") to "mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise." Id n. 437.

under generally accepted accounting principles ("*GAAP*") and has voting control over the investee (the "*Majority Investor*"). This issue directly affects MUFG because MUFG participates in two Japanese securities joint ventures with Morgan Stanley, a U.S. bank holding company.[8] Appendix A provides organizational charts summarizing the overall structures of these joint ventures.

The first Japanese securities joint venture company, Mitsubishi UFJ Morgan Stanley Securities Co., Ltd. (the "*MUFG Controlled JV*"), is engaged in investment banking and wholesale and retail securities businesses in Japan.[9] MUFG holds a 60% voting interest and 60% economic interest in the MUFG Controlled JV, and consolidates the MUFG Controlled JV in its financial statements pursuant to GAAP, while Morgan Stanley holds a 40% voting interest and 40% economic interest in the MUFG Controlled JV. The second Japanese securities joint venture, Morgan Stanley MUFG Securities Co., Ltd. (the "*MS Controlled JV*"), is engaged in investment banking, sales and trading and other businesses in Japan.[10] Morgan Stanley holds a 51% voting interest and 40% economic interest in the MS Controlled JV, and consolidates the MS Controlled JV in its financial statements pursuant to GAAP, while MUFG holds a 49% voting interest and 60% economic interest in the MS Controlled JV. Although both MUFG and Morgan Stanley (each, a "*JV Investor*") would be construed to "control" each of the two joint ventures purposes of Section 1.3(ggg)(4)(i) of the Commission's regulations, MUFG is the Majority Investor with respect to the MUFG Controlled JV and Morgan Stanley is the Majority Investor with respect to the MS Controlled JV. The relevant joint venture documentation specifically provides that MUFG shall control the MUFG Controlled JV and Morgan Stanley shall control the MS Controlled JV. The MUFG Controlled JV is operated as part of MUFG's company group and the MS Controlled JV is operated as part of Morgan Stanley's corporate group. Moreover, each of MUFG and Morgan Stanley has registered affiliated entities as swap dealers and this letter does not seek to limit the aggregation requirements for purposes of evading registration.

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8 MUFG holds an approximately 22% interest in Morgan Stanley. MUFG does not "control" Morgan Stanley for purposes of the Exchange Act.

9 The MUFG Controlled JV is organized and has its headquarters in Japan.

10 The MS Controlled JV is organized and has its headquarters in Japan.

Requiring each joint venture to aggregate the swap dealing activity of each JV Investor[11] (and each JV Investor to aggregate the swap dealing activity of each joint venture), however, would potentially impose swap dealer registration requirements and the significant attendant regulatory obligations on the joint ventures and JV Investors. For reasons discussed below, these significant regulatory costs and burdens would be unwarranted by the anti-evasion concerns that the aggregation requirement was designed to address. Furthermore, these significant regulatory costs and burdens would be imposed on non-U.S. entities on account of activities engaged in by entities operated independent of such non-U.S. entities, irrespective of whether the activities of the entities met the jurisdictional threshold under Section 2(i) of the Commodity Exchange Act ("*CEA*").

To avoid these results, we respectfully request that, to the extent aggregation is required for non-U.S. persons under the Commission's final interpretive guidance or rules, the aggregation requirements be limited where a non-U.S. joint venture is "controlled" by two investors for purposes of Section 1.3(ggg)(4) of the Commission's regulations but only one of them qualifies as a Majority Investor so that no aggregation is required as between the investor that is not a Majority Investor and the non-U.S. joint venture, provided that such investor has at least one affiliate that is a registered swap dealer.

Aggregation requirements under the de minimis exception

Under Section 1.3(ggg)(4)(i) of the Commission's regulations, a person must consider not only its own dealing activities when determining whether it qualifies for the de minimis exception but also the dealing activities of "any other entity controlling, controlled by or under common control." The Entity Definitions Release explains that this was adopted "as a means reasonably designed to prevent evasion of the limitations of that exception."[12] Due to the requirement that dealing activities of persons controlling, controlled by or under common control be aggregated, the Entity Definitions Release explains, the de minimis thresholds cannot be evaded through creation of

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11 For ease of exposition, in discussing the application of aggregation requirements as between a non-U.S. joint venture and its JV Investors, this letter does not distinguish each JV Investor from additional entities controlling, controlled by or under common control with the JV Investor (other than the non-U.S. joint venture).

12 Id.

multiple entities each of which engages in swap dealing that, standing alone, does not exceed applicable thresholds.[13]

Under Section 2(i) of the CEA, the "provisions of [the CEA] relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities—(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010." The initial proposed interpretive guidance and policy statement addressing the regulation of swap dealers in the cross-border context[14] ("*Initial Proposal*") recognized that these principles should guide the design of aggregation requirements as they apply to non-U.S. persons.[15] Given traditional principles of comity and limited extraterritorial application of law, and because requiring two entities to aggregate one another's swap dealing may result in significant regulatory obligations, we agree that the standard for triggering aggregation in the cross-border context should be informed by these principles.[16] As discussed in this letter, legitimate business considerations (that were not informed by aggregation requirements) have led to joint ventures and other business arrangements where a non-U.S. entity has two or more investors that "control" the non-U.S. entity for purposes of Section 1.3(ggg)(4)(i) of the Commission's regulations, but only one

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13 "In light of the increased notional thresholds of the final rules, and the resulting opportunity for a person to evasively engage in large amounts of dealing activity if it can multiply those thresholds, the final rules provide that the notional thresholds to the de minimis exception encompass swap and security-based swap dealing positions entered into by an affiliate controlling, controlled by or under common control with the person at issue. This is necessary to prevent persons from avoiding dealer regulation by dividing up dealing activity in excess of the notional thresholds among multiple affiliates." Entity Definitions Release at 30631.

14 Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, 77 Fed. Reg. 41214 (July 12, 2012).

15 See Initial Proposal at 41219-20.

16 Even if the Commission's statutory jurisdiction extends to regulation of certain activity, the Commission may choose to leave such activity outside of its regulatory ambit particularly when the policy reasons behind the relevant regulation are inapplicable to such activity. Accordingly, we do not see adoption of the approach proposed in this letter to require interpretation of the Commission's jurisdiction over swap activity under Section 2(i) of the CEA.

Majority Investor. In such cases, we believe that relief from aggregation requirements should be provided as between an investor that is not a Majority Investor and the non-U.S. entity, provided that such investor has at least one affiliate that is a registered swap dealer. Among other reasons for this approach is the possibility that the information sharing across partners that would be required, if aggregation included both investors and their affiliates, may well violate applicable laws prohibiting such information sharing. In addition, (i) the swap dealing activity of the investor does not affect whether the investee's activities have "a direct and significant connection with activities in, or effect on, commerce of the United States" and vice-versa, and (ii) the arrangements do not serve an evasive purpose. Providing such relief would be consistent with the underlying anti-evasion goal of aggregation, thereby avoiding undue regulatory costs and burdens on non-U.S. persons and inappropriate information sharing.[17]

Application of aggregation requirements

With respect to a non-U.S. joint venture with two investors that "control" the non-U.S. joint venture for purposes of Section 1.3(ggg)(4)(i) of the Commission's regulations, one of which is a Majority Investor, the proposed aggregation requirements would have the following results:

> (i) the joint venture would be required to aggregate the swap dealing activity conducted by both (a) the investor that is the Majority Investor, and (b) the investor that is not the Majority Investor; and
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> (ii) the swap dealing activity of the joint venture would be attributed to both (a) the investor that was the Majority Investor, and (b) the investor that was not the Majority Investor.

Although (i)(a) and (ii)(a) are consistent with the reality that the joint venture is a consolidated subsidiary of the Majority Investor and operating as part of the Majority Investor's company group, we submit that (i)(b) and (ii)(b) are not, and will have results that (1) do not further the anti-evasion purpose of the aggregation requirements, (2) are outside the core of the Commission's extraterritorial jurisdiction under Title VII and (3) impose significant costs and burdens on non-U.S. market participants.

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[17] This relief would be consistent with the Letters.

(1) No furtherance of Anti-evasion Purpose

As discussed above, the Entity Definitions Release explains that the purpose of aggregation is to prevent evasion of swap dealer registration requirements. With respect to each of MUFG's joint ventures with Morgan Stanley, applying aggregation requirements to the joint venture and the non-majority JV Investor (i.e., (i)(b) and (ii)(b) above) does not advance any anti-evasion purposes. Each of MUFG's joint ventures with Morgan Stanley was entered into on May 1, 2010, and before the statutory definition of "swap dealer" was enacted, let alone implemented through agency rulemaking.[18] These joint ventures were developed without regard to the definition of "swap dealer" or the de minimis exception therefrom. Because the MUFG Controlled JV is operated as part of MUFG's company group, no swap dealing activities of MS have been, or will be, transferred to the MUFG Controlled JV for evasion of the aggregation requirements; similarly, because the MS Controlled JV is operated as part of Morgan Stanley's corporate group, no swap dealing activities of MUFG have been, or will be, transferred to the MS Controlled JV for evasion of the aggregation requirements.[19] It does not serve an anti-evasion purpose to attribute the swap dealing activities of each joint venture to *both* JV Investors (and vice versa) notwithstanding that only one JV Investor is a Majority Investor that controls and operates the joint venture as a practical matter, consolidates the joint venture in its financial statements under GAAP and has voting control over the joint venture. Rather, such attribution results in a form of double

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18 The Final Exemptive Order recognizes that market participants that engaged in swap dealing activities through multiple affiliated entities prior to the establishment of aggregation requirements did so for reasons other than evasion of Commission rules. Specifically, Section (3) of the Final Exemptive Order provides relief from aggregation with respect to certain non-U.S. entities that were engaging in swap dealing activities with U.S. persons as of the effective date of the Final Exemptive Order. See id. at 879. Subject to footnote 4 above, this grandfathering is appropriate because the anti-evasive purpose of aggregation is not furthered when applied to operations developed prior to the relevant regulatory provisions becoming known.

19 Moreover, that neither MUFG nor Morgan Stanley distributed its swap dealing activity across affiliates to avoid registration as a swap dealer is evidenced by both MUFG and Morgan Stanley having registered multiple affiliates as swap dealers. As of December 31, 2012, MUFG has registered The Bank of Tokyo-Mitsubishi UFJ, Ltd. and Mitsubishi UFJ Securities International plc. As of December 31, 2012, Morgan Stanley has registered Morgan Stanley & Co. International plc, Morgan Stanley & Co. LLC, Morgan Stanley Bank N.A., Morgan Stanley Capital Group Inc., Morgan Stanley Capital Services LLC and Morgan Stanley Derivative Products Inc. See CFTC Announces Real-Time Public Reporting of Swap Transactions and Swap Dealer Registration Began December 31, 2012 (Jan. 2, 2013) online at http://www.cftc.gov/PressRoom/PressReleases/ pr6489-13 (last visited on Jan. 20, 2013).

counting that attributes the swap dealing of two independent financial institutions (i.e., MUFG and Morgan Stanley) to the same non-U.S. person (i.e., each joint venture company), which result is unnecessary and inappropriate to preventing evasion because the requested relief would continue to attribute the swap dealing activity of the Majority Investor to the relevant joint venture (and vice-versa) and the other JV Investor has at least one affiliate that is a registered swap dealer.[20]

(2) Outside the Core of the Commission's Extraterritorial Jurisdiction

Applying aggregation requirements to the joint venture and the non-majority investor (i.e., (i)(b) and (ii)(b) above) would potentially require the MUFG Controlled JV and the MS Controlled JV and MUFG and its non-U.S. affiliates and non-U.S. affiliates of Morgan Stanley to register as swap dealers on account of independently conducted activities (e.g., the activities of Morgan Stanley, in the case of the MUFG Controlled JV, or the activities of MUFG in the case of the MS Controlled JV). We do not believe that these results are supported by the principles of international comity reflected in Section 2(i) of the CEA. Because the activities of the joint venture are for all practical purposes controlled by the Majority Investor, the other JV Investor's activities do not affect whether the joint venture itself has "a direct and significant connection with activities in, or effect on, commerce of the United States" (and reciprocally, the activities of the joint venture do not affect whether the JV Investor that is not a Majority Investor has "a direct and significant connection with activities in, or effect on, commerce of the United States"). Furthermore, as discussed above, concerns with evasion do not support jurisdiction under Section 2(i) of the CEA in these circumstances. Accordingly, we believe that Section 2(i) of the CEA supports granting the relief requested herein.

(3) Significant Regulatory Costs and Burdens

As applied to the joint ventures between MUFG and Morgan Stanley, aggregation of swap dealing activity conducted by:

> (i) Morgan Stanley entities to the MUFG Controlled JV (and vice versa) will require (a) development of a compliance program for the MUFG Controlled JV and Morgan Stanley to obtain information as to one another's swap dealing, which program does not exist today and is difficult to establish because the MUFG Controlled JV is operated independently of Morgan Stanley entities, and (b) potentially require the MUFG Controlled JV or one or more Morgan Stanley entity to register as a swap dealer in circumstances where registration would not

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[20] See n. 13, *supra*.

be required if the MUFG Controlled JV was required to aggregate only the swap dealing activity of MUFG entities; and

(ii) MUFG entities to the MS Controlled JV (and vice versa) will require (a) development of a compliance program for the MS Controlled JV and MUFG to obtain information as to one another's swap dealing, which program does not exist today and is difficult to establish because the MS Controlled JV is operated independent of MUFG entities, and (b) potentially require the MS Controlled JV or one or more MUFG entity to register as a swap dealer in circumstances where registration would not be required if the MS Controlled JV was required to aggregate only the swap dealing activity of Morgan Stanley entities.

These results represent significant regulatory costs and burdens[21] that we believe are not (i) consistent with the facts that the MUFG Controlled JV is operated as part of MUFG's company group and the MS Controlled JV is operated as part of Morgan Stanley's company group, (ii) warranted by the policy goals behind aggregation or (iii) appropriate in light of traditional principles of international comity as discussed above.

To the extent that the Commission adopts a position that otherwise requires aggregation under Section 1.3(ggg)(4) of the Commission's regulations in these circumstances where a non-U.S. joint venture is "controlled" by two investors for purposes of Section 1.3(ggg)(4) but only one of them qualifies as a Majority Investor, we respectfully request that relief be provided from aggregation as between the investor that is not a Majority Investor and the non-U.S. joint venture, provided that such investor has at least one affiliate that is a registered swap dealer.

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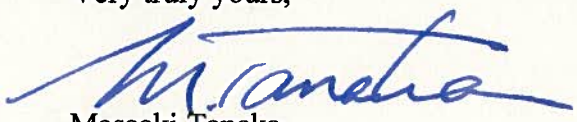
21 We expect that other non-U.S. market participants have and/or may enter into similar joint venture arrangements where two independent institutions each "control" the joint venture for purposes of Section 1.3(ggg)(4)(i) of the Commission's regulations, notwithstanding that only one of the investors is a Majority Investor. Absent relief requested in this letter, the application of aggregation requirements in these circumstances could inhibit entry into these commercial arrangements or require their restructuring.

Commodity Futures Trading Commission

We appreciate your consideration of our comments on the Proposed Guidance. Please contact Robert E. Hand, General Counsel, Mitsubishi UFJ Financial Group, Inc., U.S. Holdings Division at (212) 782-4630 (e-mail: rhand@us.mufg.jp), David J. Gilberg of Sullivan & Cromwell LLP (New York) at (212) 558-4680 (e-mail: gilbergd@sullcrom.com) or Keiji Hatano of Sullivan & Cromwell LLP (Tokyo) at +81 (3) 3213-6171 (e-mail: hatanok@sullcrom.com) with any questions about our comments.

Very truly yours,



Masaaki Tanaka,
Deputy President
Mitsubishi UFJ Financial Group, Inc.

Appendix A

Joint Ventures between MUFG and Morgan Stanley