Financial Services Agency
Government of Japan

Bank of Japan

Mr. Timothy G. Massad
Chairman
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
USA

December 19, 2016

Dear Tim,

Cross-Border Swap Rule

We appreciate the opportunity to comment on the proposed rule regarding the cross-border application of the registration thresholds and external business conduct standards applicable to swap dealers and major swap participants (the "Proposed Rule") as published by the Commodity Futures Trading Commission (the "Commission") on October 11, 2016 for comments.

We understand that the Commission has concerns that risks emanating from a non-U.S. entity could adversely affect its counterparty of U.S. Persons or Foreign Consolidated Subsidiaries (FCS), potentially leading to adverse effects on U.S. commerce. However, we believe that such concerns will need to be addressed consistent with the principles of international comity between jurisdictions, as noted in the G20 leaders' declaration in 2013. We should be able to defer to each other, based on similar outcomes, in a non-discriminatory way, paying due respect to home country regulation regimes.

The Commission, Japan Financial Services Agency ("JFSA"), and the Bank of Japan ("BOJ") have closely worked together with the shared objectives of building resilient and efficient derivatives markets and maintaining financial stability, and we look forward to continued collaboration to find efficient and effective ways, which can avoid overlapping regulations, undue burdens on market participants, market fragmentation and liquidity decrease, based on mutual cooperation and deference.

Below, we would like to provide what we think are the costs and benefits of the application of the Proposed Rules in the context of the Japanese market.

1. Benefits

In our view, requiring additional SD registration of Japanese financial institutions would not provide material benefits in securing U.S. financial stability and market integrity due to the following three reasons.

Home country regulation and supervision

The JFSA has implemented the comprehensive regulatory regime with respect to Japanese OTC derivatives market, and is willing to cooperate with the Commission in the supervision of cross-border transactions. We believe that there would be limited supervisory benefits from requiring Japanese financial institutions to register as a Swap Dealer (SD) and imposing the duplicative and overlapping regulatory requirements.

OTC derivatives reforms and risk reduction

Japan has also implemented its regulatory reforms such as clearing mandates or margin requirements which contribute to the robust risk management and reduction of systemic risk. Though the new requirements may be intended to address risk posed by transactions in the Japanese market involving U.S. related entities, when such transactions are cleared by a CCP or subject to margin requirements, the contagion and spillover risks to the U.S. financial market are extremely limited.

Requirements for Swap Dealer

In addition, both a foreign branch of U.S. SD and FCS which are registered as an SD are subject to the oversight of the Commission and comprehensive SD requirements such as SDR reporting. When “Other non-U.S Persons” enter into transactions with them, therefore, the Commission can monitor and trace such swap dealing activities without requiring Other non-U.S. Persons to register as a new SD.

2. Costs

On the other hand, costs incurred by the Proposed Rule will be significant.

Burdens on financial institutions in Japan

The extra-territorial application of SD requirements to Other non-U.S. Persons will lead to overlapped regulation, placing additional burdens on financial institutions. Although the Proposed Rule does not estimate how many Other non-U.S. Persons are required to newly register due to data constraints, in the case of Japan, not a few Japanese financial institutions may be required to register as a new SD as a result of the Proposed Rule.

In addition, we would like to stress that a good number of Other non-U.S. Persons which remain below the registration threshold under the Proposed Rule will also need to continuously monitor and deal with their trading amount with U.S. related entities including U.S. Persons, branches of U.S. Persons and FCS.

Market Fragmentation

Some Other non-U.S. Persons may opt for avoiding trading with U.S. related entities in order to keep their activities below the registration threshold. This may in turn result in market fragmentation and have an adverse impact on liquidity. A foreign branch of U.S. SD and FCS may lose business opportunities outside the U.S market.

<u>Obligations not covered by Substituted Compliance</u>
Finally, although the FCS concept was introduced at the Cross-Border Margin Rule established by the Commission in May this year and is applied to the SD threshold calculation under the Proposed Rule, many SD requirements such as trade reporting and recordkeeping are out of the scope of substituted compliances. As a result, the SD registration will lead to more substantial burdens on financial institutions compared with the Commission's margin rule.

<u>3. Conclusion</u>
As described above, we believe that the costs will outweigh the benefits. We would like to request the Commission to reconsider the proposal. In particular, we believe that the transactions with a foreign branch of U.S. SD or FCS and the transactions cleared by a CCP or subject to margin requirements should be excluded from the threshold calculation for Other non-U.S. Persons.

We look forward to continued dialogue between the Commission, the JFSA and the BOJ to attain globally coordinated regulations for a robust and efficient OTC derivatives market.

Yours sincerely,

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