



**Financial Services Agency
Government of Japan**

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

February 6, 2013

Re: Further Proposed Guidance Regarding Compliance With Certain Swap Regulations

Dear Gary,

We appreciate the opportunity to comment on the further proposed guidance regarding compliance with certain swap regulations. We are writing to ask the Commission's consideration of our general and three specific comments with respect to (i) exclusion from aggregation of U.S. and non-U.S. affiliates' transactions with U.S. persons for the purposes of the de minimis test for a non-U.S. person, (ii) clarification of the scope and definition of U.S. person, and (iii) flexibility in the expiration of the final exemptive order.

I. General comment

We appreciate the Commission's effort to provide market participants with as much clarity as possible on (i) the aggregation rule for de minimis threshold for a non-U.S. person and (ii) the scope and definition of U.S. person in the final exemptive order published on December 21, 2012. However, we are concerned that the alternative interpretation on the aggregation rule and the scope and definition of U.S. person in the further proposed guidance would make the scope of application of the Commission's regulations broader for non-U.S. persons. Since we believe that the scope of application on those two matters in the final exemptive order is acceptable, we would like to request the Commission to adopt this exemptive order as the permanent one, after the order expires in July 2013.

II. Specific comments

In addition to this general comment, we have three specific comments on the further proposed guidance as follows.

1. Exclusion from aggregation of U.S. and non-U.S. affiliates' transactions with U.S. persons for the de minimis test for a non-U.S. person

Under the further proposed guidance, a non-U.S. person would be required, in determining whether its swap dealing transactions exceed the de minimis threshold, to include the aggregate notional value of swap dealing transactions entered into by all its affiliates under common control (i.e., both non-U.S. affiliates and U.S. affiliates), but would not be required to include in such determination the aggregate notional value of swap dealing transactions of any non-U.S. affiliate under common control that is registered as a swap dealer.

As far as the Japanese financial institutions are concerned, we believe that they should not be required to include the aggregate notional value of swap dealing transactions entered into by all their U.S. affiliates, and non-U.S. affiliates under common control that are not registered as swap dealers, in addition to any non-U.S. affiliate that is registered as a swap dealer, since those affiliates are supervised by FSA Japan on a consolidated basis.

In particular, since both U.S. and non-U.S. affiliates registered as swap dealers would be subject to the Commission's regulations and supervision, their transactions with U.S. persons should be excluded for de minimis test for the non-U.S. person.

2. Clarification of the scope and definition of U.S. person

We appreciate the Commission's effort to narrow the scope and definition of U.S. person in the final exemptive order, compared with that of the proposed interpretive guidance of July 2012.

Furthermore, the proposed interpretive guidance correctly states that a foreign affiliate or subsidiary of a U.S. person would be considered a non-U.S. person, even where such an affiliate or subsidiary has certain or all of its swap-related obligations guaranteed by the U.S. person. However, it is not clear to us in this regard whether the further proposed guidance maintains this interpretation. We think the interpretation adopted in the proposed interpretive guidance is adequate, because non-U.S. affiliates of the U.S. person established under the law of foreign countries are under regulation and supervision by foreign regulators. We would like to confirm that this interpretation holds valid under the further proposed guidance.

3. Flexibility in the expiration of the final exemptive order

We understand that the Commission intends to conduct assessment for substituted

compliance with foreign regulatory requirements before the expiration date (July 12, 2013) of the final exemptive order. If, at the expiration date, substituted compliance with the Japanese regulatory requirements is not available for Japanese financial institutions which registered as swap dealers, they would be subject to the Commission's regulations after the expiration date. This is not acceptable to us. Therefore, we would like to urge the Commission to consider extending the effectiveness of the final exemptive rule, depending on whether and when such substituted compliance would be available.

We would like to kindly request that the Commission take into account the above and amend the further proposed guidance in accordance with our requests. Should you have any questions concerning the above, please do not hesitate to contact us.

Sincerely yours,



Masamichi Kono
Vice Commissioner for International Affairs
Financial Services Agency
Government of Japan

Cc : Commissioner Ms. Jill E. Sommers, CFTC
Commissioner Mr. Bart Chilton, CFTC
Commissioner Mr. Scott D. O'Malia, CFTC
Commissioner Mr. Mark P. Wetjen, CFTC

Chairman Elisse B. Walter, SEC

Under Secretary for International Affairs Lael Brainard, U.S. Department of the Treasury