August 27, 2012

VIA ELECTRONIC MAIL

The Honorable Gary Gensler
The Honorable Jill E. Sommers
The Honorable Bart Chilton
The Honorable Scott D. O'Malia
The Honorable Mark P. Wetjen

Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

RE: Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act

Dear Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen:

The Investment Industry Association of Canada (the "IIAC"), appreciates the opportunity to comment on the Commodity Futures Trading Commission's (the "CFTC" or the "Commission") proposed interpretative guidance ("Proposed Guidance") on the cross-border application of certain swaps provisions in the Commodity Exchange Act ("CEA"). The IIAC is a professional association representing approximately 200 Canadian securities dealers. The IIAC's mandate is to promote efficient, fair and competitive capital markets in Canada. The IIAC is generally supportive of the Proposed Guidance. However, we would like to take this opportunity to point out certain aspects of the Proposed Guidance that we feel need more clarification or consideration.

A. Background

Currently, many IIAC members or their affiliates are planning to register with the CFTC as swap dealers or major swap participants ("MSPs") in order to continue their cross-border swaps

operations. At the same time, Canadian securities regulators are also in the process of establishing new rules and regulations governing swaps transactions. The Canadian Securities Administrators (the "CSA"), the umbrella group of Canada's provincial securities commissions, has drafted a series of consultation papers on the regulation of OTC derivatives in Canada. Among other things, these consultation papers discussed substituted compliance regimes for non-Canadian trade repositories and non-Canadian central counterparty clearing houses. These papers are currently out for comment and organizations such as the IIAC have been very involved in the preparation of industry submissions. The CSA Derivatives Committee has continued to contribute to and follow international regulatory proposals and legislative developments, and collaborate with the Bank of Canada, the Office of the Superintendent of Financial Institutions, the Department of Finance Canada, market participants, as well as bodies such as the International Organization of Securities Commissions, the Financial Stability Board and the OTC Derivatives Regulators' Forum. As a result, Canadian regulations are expected to be in line with international policy with respect to clearing requirements, exemptions, reporting and enforcement.

Although we recognize the CFTC's interest in assuring the safety and soundness of the U.S. swap markets, we believe that the Proposed Guidance, if implemented in its current form, will create unnecessarily burdensome compliance requirements for these IIAC members, since they will also be subject to duplicative Canadian regulations. We are also concerned that the proposed approach may serve as a template for future actions by other U.S. financial regulators involving cross-border transactions and will impose unfair barriers to the international community in conducting swaps business with U.S. Persons. Moreover, the substituted compliance regime may serve as a model for similar approaches by other U.S. or non-U.S. financial regulators or in cross-border discussions concerning reciprocity initiatives. We strongly believe that the concept of substituted compliance has merit, but it must be focused on outcomes and goals rather than differences in detailed rules. It must be premised on true comity -- the understanding that Canada and certain other jurisdictions have sound regulatory regimes that compare favourably to that in existence and developing in the United States.

This letter addresses certain specific areas of the Proposed Guidance that we believe the CFTC should clarify, including the definitions of "U.S. Person," "swap dealer," and "MSP." In addition, the letter provides comments on the CFTC's proposed cross-border application of the swaps regulations and the limited scope for a "substituted compliance" regime for non-U.S. swap dealers and MSPs. Throughout letter, we have also provided responses to some of the specific questions that the CFTC posed in the Proposed Guidance.

B. Definition of U.S. Person

For purposes of the Proposed Guidance, the CFTC proposes to interpret the term "U.S. person" by reference to the extent swap activities or transactions involving one or more such person have a relevant effect on U.S. commerce.[1] As defined in the Proposed Guidance, a "U.S. person,"

[1] Section 2(i) of the CEA states that the provisions added to the CEA by Title VII of the Dodd Frank 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

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would include: (i) any natural person who is resident of the United States; (ii) any corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund, or any form of enterprise similar to any of the foregoing, in each case that is either (A) organized or incorporated under the laws of the United States or having its principal place of business in the United States ("legal entity") or (B) in which the direct or indirect owners thereof are responsible for the liabilities of such entity and one or more of such owners is a U.S. person; (iii) any individual account (discretionary or not) where the beneficial owner is a U.S. person; (iv) any commodity pool, pooled account, or collective investment vehicle (whether or not it is organized or incorporated in the United States) of which a majority ownership is held, directly or indirectly, by a U.S. person(s); (v) any commodity pool, pooled account, or collective investment vehicle the operator of which would be required to register as a commodity pool operator under the CEA; (vi) a pension plan for the employees, officers, or principals of a legal entity with its principal place of business inside the United States; and (vii) an estate or trust, the income of which is subject to United States income tax regardless of source.

Although swaps are most likely to be entered into with entities, we view the definition of U.S. person as both the functional definition for swap purposes, as well as a possible template for definitions used in U.S. financial regulation generally. We therefore have made suggestions regarding individuals as well as for entities, given this immediate and broader purpose. In addition, as a guiding principle, the goal of regulatory clarity would be enhanced if the definition conformed to established definitions and interpretative positions in the U.S. securities laws such as those used in the Securities and Exchange Commission's ("SEC") Regulation S and Rule 15a-6, and related interpretations. Ultimately, the financial community and regulators would benefit from at least a common set of definitions when there are common goals of prudential regulation and investor protection.

We believe that the CFTC's proposed definition is overly broad and encompasses many more individuals and entities than would otherwise be considered to be a "U.S. person" under other commonly used CFTC and SEC definitions. Such a broad definition could trigger U.S. swap dealer and MSP registration requirements when such registration may not in fact be necessary. The threat of registration requirements may unduly restrict the ability of foreign persons to engage in transactions with U.S. counterparties, in circumstances in which the systemic or investor protection impact in the United States is very slight. Therefore, in response to Question 1 of the Proposed Guidance, we have made certain suggestions as to how we believe the definition of "U.S. person" should be modified.

First, we do not believe that the location where an entity is organized should be relevant in determining whether it is a "U.S. person." Corporations are incorporated in the United States for a variety of tax, marketing, corporate governance or regulatory reasons that do not necessarily suggest that the United States is the primary or even a principal nexus for the entity's activities. Therefore, we suggest that U.S. person status be based instead on the location from which the

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Commission may prescribe or promulgate as are necessary to promote the evasion of any provision of [the CEA] that was enacted by the Wall Street Transparency and Accountability Act of 2010."

corporation is centrally managed or by the location of a majority of its directors or executive officers (or equivalent office-holders) rather than place of organization.

In addition, registration as a commodity pool operator ("CPO") should not be relevant in determining U.S. person status if other connections to the United States are not present. We do not believe that licensing, in and of itself, indicates a significant enough interest to have a relevant effect on U.S. commerce. Firms may register as CPOs because of a small number of U.S. investors or for marketing purposes that would not necessarily impact U.S. commerce. However, if CPO registration was to trigger U.S. person status, an unintended consequence of such interpretation could be that firms would be deterred from registering unless it was absolutely essential to their business.

We also suggest that the CFTC clarify U.S. person status for collective investment vehicles. Under the Proposed Guidance, U.S. Person status is triggered if majority ownership in the collective investment vehicle is held, directly or indirectly, by U.S. persons. However, it is often difficult to determine the direct and indirect beneficial ownership of collective investment vehicles. Therefore, we believe that a firm should be able to rely on annual certifications from investment managers, and investment managers should be able to rely on certifications from subscribers, and an obligation by subscribers to update such information in order to demonstrate U.S. Person status, relied upon in each case in good faith.

Further, we do not believe that a pension plan exclusively for foreign employees of a U.S.-based entity should be considered a U.S. Person. Similarly, certain foreign trusts with U.S. beneficiaries should be excluded from U.S. person status, including Canadian Registered Retirement Savings Plans and other tax-advantaged plans,[2] even if the trust is deemed to be a U.S. taxpayer. These plans serve a variety of retirement or other goals sought by foreign governments, and should not be swept into the CFTC's regime based on U.S. tax determinations, which do not have any necessary connection to the goals of financial regulation.

We also suggest that for purposes of determining whether a natural person is a U.S. resident and thus a U.S. Person, the CFTC should, as a convenient reference point, use the approach taken in the residence-based prong of the U.S. taxpayer definition in the Internal Revenue Service Regulations.[3] This definition would exclude individuals who are in the United States for fewer than 183 days from being considered a resident of the United States and would provide a clear cut approach to U.S. person status. In addition, individuals who are under short term inter-corporate transfers or who are in the United States as a student or an international diplomat should not be considered to be a U.S. person. With the increasingly mobile nature of individuals, especially with regard to individuals crossing over the U.S./Canadian border, it is important that there be some type of clarification regarding how residency would be established for U.S. person

[2] A Registered Retirement Savings Plan or RRSP is a type of Canadian retirement account, similar to an Individual Retirement Account in the United States. Other tax-advantaged plans further educational savings goals for example.

[3] We note that this means of determining U.S. residency is also the approach used by the SEC in a number of areas including for purposes of Regulation S and for Rule 15a-6 of the Securities Exchange Act of 1934 (the "Exchange Act").

status. Further, we believe that firms should be able to rely, in good faith, on an individual's certification to attest to their residency status.

In addition, the CFTC should clarify that U.S. investment advisers or other fiduciaries acting on behalf of non-U.S. accounts should not be considered U.S. persons.[4] The CFTC should also clarify that U.S. Person status would not be triggered when a foreign individual, who has established a relationship with a firm outside of the United States, then moves to the United States. If the individual was considered a U.S. Person under these circumstances, foreign firms may have an incentive to desert these clients when they relocate. Further, the CFTC should clarify that if a firm transacts business with an individual or entity when they are outside of the United States, the foreign firm should be able to rely, in good faith, upon the individual or entity's certification as to their residency, without needing to do a further inquiry to determine if they are a U.S. Person.

C. Definitions and Registration Thresholds

In addition to clarifying the definition of "U.S. Person," it is also important for the CFTC to limit the expansive statutory definitions of "swap dealer" and "MSP." The statutory definitions of "swap dealer" and "MSP" do not contain any geographic limitations and do not distinguish between U.S. and non-U.S. swap dealers or MSPs. The CFTC has proposed that the level of swap participation that is enough to require registration when conducted by a U.S. person, shall also require registration by a non-U.S. person when transacting with U.S. counterparties.

We believe that the swap dealer registration requirements may require non-U.S. persons to register as swap dealers with the CFTC even when there is not a "direct and significant connection" with activities and commerce in the United States.[5] We submit, however, that the CFTC can properly differentiate between U.S. and non-U.S. entities in recognition of the significant burdens that will be imposed on established foreign businesses, subject to non-U.S. regulation. One method would be to consider a system that is similar to the SEC's "chaperoning" regime under Rule 15a-6 under the Exchange Act. Under this regime, non-U.S. swap dealers would be able to transact business with U.S. counterparties under specified circumstances without registering as swap dealers in the United States as long as they were properly chaperoned by a U.S. registered swap dealer. Such an approach could reasonably be adopted for non-U.S. firms that have up to a multiple of the minimum thresholds otherwise requiring registration (perhaps raising the threshold by a multiple of 3 for non-U.S. entities) before swap dealer registration was required. Raising the threshold for non-U.S. entities would make it more likely that such non-U.S. entities in fact did have a "direct and significant connection" with U.S. commerce before registration was required. This would properly reflect comity with regard to foreign entities without the need to utilize a substituted compliance regime.

Despite the fact that we believe the swap dealer registration requirement is still overly broad, we do appreciate certain steps that the CFTC has already taken to narrow the scope of when swap

[4] This would be the same approach as is taken under U.S. broker-dealer registration requirements and Regulation S and Rule 15a-6.

[5] See *supra* Note 1.

dealer registration would be required. In response to Question 4 of the Proposed Guidance, we support the CFTC's interpretation that would exclude foreign branches of registered U.S. swap dealers transacting with non-U.S. persons for purposes of swap dealer registration thresholds. In addition, in response to Question 5 of the Proposed Guidance, we support the CFTC's interpretation that activities by affiliated U.S. persons should be excluded from calculating the de minimis threshold for swap dealer registration.[6] We also believe that it is important that the CFTC permit foreign firms to exclude positions held by affiliated non-U.S. entities that are registered as U.S. swap dealers.

As stated in the Proposed Guidance, a person that that is not engaged in swap dealing as part of a "regular business" is not required to apply the de minimis threshold test and is not a swap dealer under the CEA. In response to Question 2 of the Proposed Guidance, we believe clarification is needed to understand when a person is engaged in swap dealing as part of a "regular business." The CFTC should affirmatively indicate that press releases by foreign entities made in the ordinary course of business, foreign media coverage, websites with appropriate disclaimers, road shows and other capital raising activities in the United States that refer to a foreign entity's derivatives activities should not be considered as relevant to whether it is engaged in such a "regular business." Similarly, publicity generated by any third parties without the explicit consent of the foreign firm, quotations published by third party vendors and disseminated in the United States and quotations on foreign trading platforms should not be considered "regular business" for purposes of determining whether swap dealer registration is required. These are all issues addressed by the SEC's Regulation S and related interpretations and should be addressed in this context as well.

We submit that it is also important for the CFTC to expand upon its position with regard to guarantees for purposes of determining whether swap dealer or MSP registration is necessary. The CFTC should confirm that a guarantee by a foreign holding company is not deemed to be a guarantee by all of its subsidiaries, including U.S. entities as a result of the indirect ownership.

D. Foreign Branches

In addition to the definition of a U.S. Person and the registration thresholds for swap dealers and MSPs, the CFTC should also clarify certain aspects of its interpretation regarding foreign branches of U.S. swap dealers. In the Proposed Guidance, the CFTC stated that since a foreign branch of an entity has no legal existence separate from a U.S. principal entity that is the legal counterparty to swaps, the CFTC would apply the swap dealer registration requirements to a U.S. person and its foreign branches on an entity wide basis. In response to Question 3 of the Proposed Guidance, we agree with this interpretation. However, the CFTC should explicitly provide that any foreign branches that are themselves incorporated as distinct entities, should be considered separate entities for purposes of determining whether swap dealer registration is required. For example, a foreign location can be considered a branch of a registered broker-dealer under U.S. securities laws notwithstanding that it is housed in an incorporated entity.

[6] Section 1.3(ggg)(4) of the CFTC's regulations requires that a person include, in determining whether its swap dealing activities exceed the de minimis threshold and thus are subject to swap dealer registration, the aggregate notional value of swap dealing transactions entered into by its affiliates under common control.

Such an incorporated branch should properly be considered a separate entity notwithstanding that it is a branch of an SEC-registered broker dealer.

We also seek clarification with regard to the treatment of financial institutions that operate under a "central booking" model in which swaps are solicited or negotiated through their branches, agencies, affiliates or subsidiaries but are booked directly or indirectly, in a single legal entity (typically the parent company) for balance sheet and financial reporting purposes. In the Proposed Guidance, the CFTC stated that a U.S. person who books the swaps transaction would be required to register as a swap dealer, regardless of whether the swaps were directly booked by the U.S. person (by such person becoming a party to the swap) or indirectly transferred to the U.S. person (by way of a back-to-back swap or other arrangement). A similar analysis would be used when a non-U.S. person would be the booking entity to swaps. Under these circumstances, even if the U.S. branch, agency, affiliate, or subsidiary of a non-U.S. person engaged in solicitation or negotiation in connection with the swap entered into by the non-U.S. person, the registration requirement, applicable to swap dealers would also apply to the non-U.S. persons.

We question whether the U.S. booking entity with a foreign counterparty should be required to register as a swap dealer if it is unconditionally guaranteed by a foreign entity that is subject to high regulatory capital standards. Further, we do not believe that a non-U.S. booking entity should have to register as a swap dealer merely because a U.S. affiliate solicited a non-U.S. person and the transaction was booked through the non-U.S. entity.

E. Cross-Border Application

Under the CEA and CFTC rules, once registered, a non-U.S. swap dealer and MSP become subject to all of the substantive requirements of U.S. swap dealers and U.S. MSPs with respect to swaps activities. The CFTC has divided these requirements into two categories: (i) entity-level requirements, which apply to a swap dealer or MSP as a whole; and (ii) transaction-level requirements, which apply to the individual swap.

In response to Question 10 of the Proposed Guidance, we agree with the CFTC's decision to distinguish entity-level and transaction-level swap requirements. In addition, subject to the principles of international comity and to the concept of substituted compliance, discussed below, we agree that certain entity-level requirements, including capital adequacy, chief compliance officer requirements, risk management and swap data recordkeeping, should apply to U.S. and non-U.S. swap dealers and MSPs. These rules represent key components of a firm's internal risk controls and constitute the firm's first line of defense against financial, operational and compliance risks. However, we believe that other entity-level requirements, including swap data repository ("SDR") reporting, should not be applicable to non-U.S. swap dealers and MSPs. We understand that the CFTC believes that direct access to data concerning all swaps in which a registered swap dealer or MSP enters into is important. Still, we submit that the burden on non-U.S. swap dealers and MSPs should be mitigated by cooperation from the SDRs, without the need for special obligations on registrants. Participants in SDRs could appropriately be required to agree that data can be shared for legitimate regulatory purposes among U.S. and non-U.S. authorities.

In addition, in response to Question 12 of the Proposed Guidance, subject to the principles of international comity and to the discussion of substituted compliance below, we agree that transaction-level requirements should apply in transactions by registered swap dealers and MSPs with U.S. persons. Transaction-level requirements include: (i) clearing and swap processing; (ii) margining and segregation for uncleared swaps; (iii) trade execution; (iv) swap trading relationship documentation; (v) portfolio reconciliation and compression; (vi) real-time public reporting; (vii) trade confirmation; (vii) daily trading records; and (ix) external business conduct standards.

We note however, in response to Question 15 of the Proposed Guidance that, as discussed above, a guarantee by a foreign holding company should not be deemed to be the guarantee by all of its subsidiaries, including U.S. entities. In addition, we believe that the CFTC should recognize foreign regulation where there is a U.S. booking entity that is guaranteed by a highly capitalized foreign entity without the need for a full substituted compliance analysis, as discussed below.

We also suggest, in response to Question 13 of the Proposed Guidance, that the CFTC and foreign regulators work together to develop a common set of practices across jurisdictions so that the transaction-level requirements will not be as burdensome to non-U.S. swap dealers and MSPs or to U.S. swap dealers and MSPs conducting business in other jurisdictions.

In response to Question 22 of the Proposed Guidance, we believe that further clarification is needed with regard to the CFTC's transaction-level requirements for "conduits." The CFTC has acknowledged that conduits are often used legitimately to move economic risks from one person within a corporate group to another in order to manage an overall swap portfolio. However, we understand that the CFTC has concerns regarding the flow of risk to the United States by an entity that operates as a conduit for a U.S. person to execute swaps outside of U.S. regulations. The CFTC noted that rather than execute a swap opposite a US. counterparty, which would be subject to the U.S. swap transactional requirements, a U.S. swap dealer or MSP could execute a swap with its foreign affiliate or subsidiary, which could then execute a swap with a non-U.S. third-party in a jurisdiction that is unregulated or lacked comparable transactional requirements. Therefore, the CFTC proposed to apply transaction-level requirements to swaps in which: (i) a non-U.S. counterparty is majority owned, directly or indirectly, by a U.S. person; (ii) the non-U.S. counterparty regularly enters into swaps with one or more other U.S. affiliates or subsidiaries of the U.S. person; and (iii) the financials of such non-U.S. counterparty are included in the consolidated financial statements of the U.S. person. While we understand the reasoning behind the CFTC's interpretation, we ask that the CFTC clarify what it means to "regularly enter into swaps with...U.S. affiliates" and under what precise circumstances the CFTC would interpret the financials of a non-U.S. counterparty to be combined with the financial statements of the U.S. person for this purpose.

In response to Question 18 of the Proposed Guidance, with respect to external business conduct standards, we agree with the CFTC's position not to require non-U.S. swap dealers and MSPs to comply with these standards when transacting swaps with a non-U.S. counterparty (whether or not guaranteed by a U.S. person). We appreciate the CFTC's position that these are sales practice concerns relating to swaps between non-U.S. persons, taking place outside of the United States, and implicate fewer U.S. supervisory concerns than other transaction-level requirements.

Furthermore, when weighed together with the supervisory interests of other foreign regulatory regimes, imposing U.S. regulation on these entities does not appear to be warranted.

F. Substituted Compliance

Because the U.S. regulations imposed on U.S. and non-U.S. swap dealers and MSPs are expansive, swap dealers and MSPs may incur significant operational, legal and administrative costs in connection with the registration and ongoing compliance responsibilities required under the CEA and CFTC swaps regulations, reflecting the impact of duplicative regulatory standards on firms registered or regulated in multiple jurisdications. In addition, some U.S. firms that operate through foreign branches may feel compelled to convert into separately capitalized affiliates in order to limit the impact of the CEA and CFTC swaps regulations.

However, the Proposed Guidance provides for a system of substituted compliance for non-U.S. swap dealers and MSPs that may lessen some of the burdens associated with swap regulation compliance. We are very supportive of a system of substituted compliance as we believe that this would allow for a more flexible and less onerous compliance process for non-U.S. swap dealers and MSPs. In addition, the use of substituted compliance would build upon the CFTC's long-standing policy of recognizing comparable regulatory regimes based on internal coordination and principles of comity. Further, the use of substituted compliance should alleviate some of the practical concerns regarding cross-border swaps regulation, including limitations in the CFTC's supervisory resources and its ability to oversee and enforce application of the CEA and CFTC rules outside of the United States. Since it would be difficult for the CFTC to regulate all market participants and swaps activities, under a system of substituted compliance, the CFTC would be able to rely on the resources and experience of other comparable jurisdictions.

However, we believe that the system of substituted compliance proposed by the CFTC in the Interpretive Guidance should be modified to achieve a more workable option for non-U.S. swap dealers and MSPs. Under the Proposed Guidance, the CFTC would permit non-U.S. swap dealers and MSPs to substitute compliance with the requirements of their relevant home jurisdiction's laws and regulations in lieu of the CEA and CFTC regulations if the CFTC finds that such requirements are comparable to analogous requirements under the CEA and CFTC regulations. However, the CFTC proposed to make comparability determinations on an individual requirement basis, rather than for the foreign regime as a whole.

The CFTC has explained the use of the individual requirement comparability determination on the basis that it would allow for a more flexible registration process because a non-U.S. person could become registered as a swap dealer or MSP even if its home jurisdiction's laws were not comparable with all aspects of U.S. swap requirements. For each request for a finding of comparability with respect to a specific requirement, the CFTC expects to receive, at a minimum, a statement of the factual basis for such request, including all applicable legislation, rules and policies. The CFTC indicated that it would determine comparability using an approach similar to the one it has adopted in exempting foreign brokers from registration as futures commission merchants under CFTC Rule 3010. Among other things, the CFTC said that it would take into account the scope and objectives of the regulatory requirement(s); the comprehensiveness of such requirements; the comprehensiveness of the foreign regulator's

supervisory compliance program; and the foreign regulator's authority to support and enforce its oversight of the non-U.S. swap dealer or MSP.

Although we understand the CFTC's intent behind making comparability determinations on an individual requirement basis, we believe that implementing this type of arrangement will be burdensome on non-U.S. swap dealers and MSPs, as well as on the CFTC. Non-U.S. swap dealers or MSPs (or a representative entity on their behalf) will have to demonstrate that substituted compliance is appropriate for each swap regulation to which it is subject. The CFTC will then have to make a determination as to comparability for each such requirement.

The CFTC should strive to find comparability rather than get bogged down in detailed differences that could as readily be debated among domestic U.S. agencies. The U.S. should not export jurisdictional debates that lack substance. Registered entities should not be required to comply with nuanced, but insubstantial differences in record-keeping, reporting, financial responsibility, customer disclosures and any other elements of the comprehensive U.S. rulebook that is emerging.

In response to Question 26 of the Proposed Guidance, we suggest that the CFTC take a more holistic approach to addressing substituted compliance. The CFTC should work with foreign regulators at the outset to identify jurisdictions in which substituted compliance would be appropriate. We believe that the CFTC should focus less on whether each swaps requirement has a directly comparable provision in a foreign jurisdiction, and instead focus on whether the objectives and intended outcomes are similar. Further, although we believe that that non-U.S. swap dealers and MSPs can be helpful to the CFTC to understand why substituted compliance is appropriate with their home country's regulations, we believe that the burden should not be primarily on the swap dealer or MSP to prove comparability. U.S. and foreign regulators should take the lead in understanding each other's regulatory regimes and explaining why substituted compliance is appropriate.

In order to create a smooth transition to a substituted compliance regime, the CFTC should initially work with jurisdictions, like Canada, in which there has been a history of effective regulatory cooperation and recognition in implementing reciprocal substituted compliance. Events have clearly demonstrated effective regulation of Canadian financial institutions. This approach should be taken with all jurisdictions in which memoranda of understanding are already in place or in which entities from that jurisdiction have been granted exemptions under CFTC Rule 30.10.

Once a substituted compliance regime has been accepted, we also suggest that the CFTC consider working with U.S. self-regulatory organizations ("SROs"), including the Financial Industry Regulatory Authority, so that swap dealers that are members of the SRO are eligible to make use of substituted compliance concepts without being in violation of SRO rules.

Under the Proposed Guidance, after the CFTC approves substituted compliance for a swap requirement, the non-U.S. swap dealer or MSP still has a continuing obligation to notify the CFTC each time there is a material change in their home jurisdiction's swap regulations. We submit that under current information-sharing arrangements, the CFTC and foreign regulators already have a responsibility to cooperate with each other and provide updated information to

one another. We do not believe that the burden of submitting updated rules and regulations should be a condition placed on the non-U.S. swap dealers or MSPs for continuing substituted compliance recognition.

The CFTC should also be mindful that the more administrative and operational restrictions it places on non-U.S. swap dealers and MSPs, the more likely it will be that foreign regulators place comparable restrictions on U.S. swap dealers and MSPs. The CFTC should be cognizant of the interaction of its swaps regulations with the regulations of other jurisdictions, which also have legitimate regulatory interests in cross-border swaps transactions. The most favourable approach is for the U.S. authorities and the rest of the international regulatory community to work together to align regulations and develop common standards.

We are hopeful that a system of substituted compliance, with the features described above, could become a precedent for mutual recognition in the swaps area as well as other areas of financial regulation, including broker-dealer, investment adviser, future commission merchant and commodity trading advisor registration and compliance. The more interconnected the world's financial markets become, the more imperative substituted and reciprocal compliance arrangements will be since it is not efficient nor practical for multiple jurisdictions to require firms to comply with numerous regimes with similar goals, but with painstaking differences in detail. The benefits of common approaches and shared information are demonstrated in the information sharing memoranda of understanding that the CFTC and other U.S. financial regulators have with Canadian and other non-U.S. authorities, and more recently by the Intergovernmental Approach ("IGA") to implementing the Foreign Account Tax Compliance Act ("FATCA"). The IGA is intended to provide a common approach to FATCA implementation through domestic reporting and reciprocal automatic exchange of information. Such arrangements can reduce the complexity involved in implementing new regulations and should be used in the regulation of swap markets.

G. Cross-Border Application to Non-Swap Dealer and MSPs

In addition to interpretive guidance for swap dealers and MSPs, the Proposed Guidance also provided interpretations for entities engaged in cross-border swaps transactions that were neither swap dealers nor MSPs. We do not object to the outlined cross-border approach to non-swap dealers or MSPs since the obligations appear to be limited to U.S. persons. However, we submit that the definition of U.S. person should be modified as we have proposed above.

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Thank you for providing us with the opportunity to provide comments on the cross-border application of certain swaps provisions. We would be pleased to discuss any comments expressed herein, or provide the CFTC with any additional assistance as it proceeds with this guidance.

Yours sincerely,

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