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By Electronic Mail

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549–1090

Re: Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants: File Number S7–02–13 and S7–40–11

Dear Ms. Murphy:

Mitsubishi UFJ Financial Group, Inc. ("*MUFG*", "*we*" or "*us*", as applicable), appreciates the opportunity to comment on the above-referenced proposed rules relating to the registration of security-based swap dealers (the "*Proposed Rules*") issued by the Securities and Exchange 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. The Commission's ultimate approach to registration of security-based swap dealers in the global context is extremely important to MUFG, as a large, multinational organization.[1]

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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. security-based swap regulations. Aggregating security-based swap dealing activity across multiple entities in multiple

In order to determine whether an entity has exceeded the de minimis threshold under Rule 3a71–2(a)(1) adopted by a release (the "*Intermediary Definitions Adopting Release*") issued jointly by the Commission and the Commodity Futures Trading Commission (the "*CFTC*")[2] and thus must register as a security-based swap dealer, the Commission has proposed a structure whereby entities within an organization must "aggregate" securities-based swap dealing activities by other entities, other than a registered security-based swap dealer that is operationally independent of the other entity.[3] We respectfully submit that the proposed cross-border aggregation rules will increase costs and burdens significantly for non-U.S. market participants, with no corresponding benefits to protection of U.S. markets or market participants.[4]

The proposed aggregation rules use the concept of "control" to determine the entities to which aggregation applies. Control for this purpose means "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".[5] The use of this definition of control raises a number of difficult issues in that control is not exclusive; i.e., two or more persons may control the same entity. Requiring aggregation by two or more persons of the same entity simply does not make sense from a policy perspective or otherwise. We believe that in the circumstances where a non-U.S. entity is "controlled" by two or more investors for purposes of Rule 3a71–2(a)(1) and one of them controls or operates the day-to-day business of the entity,

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jurisdictions presents difficult and challenging operational, legal and regulatory issues. A final approach that does not recognize this will lead to discontinuation of activity in affected entities, less competition, and underserved jurisdictions.

2 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).

3 This structure, as it applies to cross-border dealing activity, is provided in proposed Rule 3a71-3(b).

4 MUFG has submitted a comment letter to the CFTC addressing similar concerns with respect to the Proposed Guidance Regarding Compliance With Certain Swap Regulations issued by the CFTC. 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.

5 Intermediary Definitions Adopting Release at n. 437

consolidates the entity in its financial statements under generally accepted accounting principles ("*GAAP*") and has a majority of the voting securities of the entity (the "*Majority Investor*"), the appropriate standard is to require aggregation by the Majority Investor but not by any other investor. This issue directly affects MUFG because MUFG participates in two Japanese securities joint ventures with Morgan Stanley, a U.S. bank holding company.[6] 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.[7] 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.[8] 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*") could be construed to "control" each of the two joint ventures for purposes of Rule 3a71–2(a)(1), 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, Morgan Stanley expects to have at least one affiliate registered as a security-based swap dealer.

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6 MUFG holds an approximately 22% interest in Morgan Stanley. MUFG does not "control" Morgan Stanley for purposes of the Securities Exchange Act (the "*Exchange Act*").

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

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

Requiring each joint venture to aggregate the security-based swap dealing activity of each JV Investor[9] (and each JV Investor to aggregate the security-based swap dealing activity of each joint venture), however, would potentially impose security-based 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 30(c) of the Exchange Act.

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. entity is "controlled" by two or more investors for purposes of Rule 3a71–2(a)(1) 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. entity.

Aggregation requirements under the de minimis exception

Under Rule 240.3a71–2(a)(1), 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 Intermediary Definitions Adopting Release explains that this was adopted "as a means reasonably designed to prevent evasion of the limitations of that exception."[10] Due to the requirement that dealing activities of persons controlling, controlled by or under common control be aggregated, the Intermediary Definitions Adopting Release explains, the de minimis thresholds cannot be evaded through creation of multiple entities each of which engages in security-based swap dealing that, standing alone, does not exceed applicable thresholds.[11]

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9 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).

10 Intermediary Definitions Adopting Release at n. 437.

11 "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

Under Section 30(c) of the Exchange Act, the "[n]o provision of [the Exchange Act] that was added by the Wall Street Transparency and Accountability Act of 2010, or any rule or regulation thereunder, shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States, unless such person transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of [the Exchange Act] that was added by the Wall Street Transparency and Accountability Act of 2010." Given traditional principles of comity and limited extraterritorial application of law, and because requiring two or more entities to aggregate the security-based swap dealing activities of one entity may result in significant regulatory obligations, we believe that the standard for triggering aggregation in the cross-border context should be informed by these principles. 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 Rule 3a71–2(a)(1), but only one 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. 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, the arrangements do not serve an evasive purpose.[12] 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.[13]

Application of aggregation requirements

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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." Intermediary Definitions Adopting Release at 30631.

12 Alternatively, the Commission could address these concerns by providing that in a situation in which one or more persons control the same entity, the controlling persons will be required to designate one person as the controlling person for purposes of Rule 3a71-2(a)(1).

13 Providing such relief would also be consistent with the Commission's treatment of inter-affiliate transactions, pursuant to which the Commission has provided a bright-line definition of "majority-owned affiliates". Rule 3a71-1(d).

With respect to a non-U.S. joint venture with two investors that "control" the non-U.S. joint venture for purposes of Rule 3a71–2(a)(1), 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 security-based 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
>
> (ii) the security-based swap dealing activity of the joint venture would be attributed to both (a) the investor that is the Majority Investor, and (b) the investor that is 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 and are therefore outside the Commission's extraterritorial jurisdiction under Section 30(c) of the Exchange Act and (2) impose significant costs and burdens on non-U.S. market participants.

(1) No furtherance of Anti-evasion Purpose

As discussed above, the Intermediary Definitions Adopting Release explains that the purpose of aggregation is to prevent evasion of security-based 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. Because the MUFG Controlled JV is operated as part of MUFG's company group, no security-based 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 security-based swap dealing activities of MUFG have been, or will be, transferred to the MS Controlled JV for evasion of the aggregation requirements. It does not serve an anti-evasion purpose to attribute the security-based 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 counting that attributes the security-based 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 security-based swap

dealing activity of the Majority Investor to the relevant joint venture (and vice-versa). Given that no anti-evasion purpose can be advanced by applying aggregation requirements in this case, we submit that the Commission's extra-territorial jurisdiction as provided by Section 30(c) of the Exchange Act would be exceeded in this case.[14]

(2) Significant Regulatory Costs and Burdens

As applied to the joint ventures between MUFG and Morgan Stanley, aggregation of security-based 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 security-based 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 security-based swap dealer in circumstances where registration would not be required if the MUFG Controlled JV was required to aggregate only the security-based 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 security-based 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 security-based swap dealer in circumstances where registration would not be required if the MS Controlled JV was required to aggregate only the security-based swap dealing activity of Morgan Stanley entities.

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[14] We recognize that the Commission's position is that "Section 30(c) permits the Commission to impose prophylactic rules intended to prevent possible evasion, even if they affect both evasive and non-evasive conduct" and even if they apply, as they would in the case of the joint ventures described herein, to pre-existing structures. 78 Fed. Reg. 30968 (May 23, 2013) at 30987. However, we submit that to apply the Proposed Rules without modification to the circumstances described in this letter would not represent a reasonable attempt to prevent possible evasion.

These results represent significant regulatory costs and burdens[15] 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.

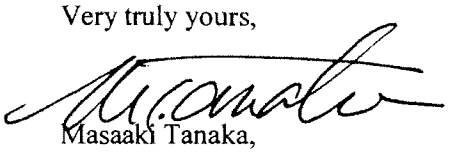
To the extent that the Commission adopts a position that otherwise requires aggregation under Rule 3a71–2(a)(1) in the circumstances where a non-U.S. entity is "controlled" by two or more investors for purposes of Rule 3a71–2(a)(1) but only one of them qualifies as a Majority Investor, we respectfully request that relief be provided from aggregation as between the investor that is not a Majority Investor and the non-U.S. entity.

* * *

15 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 Rule 3a71–2(a)(1), 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.

We appreciate your consideration of our comments on the Proposed Rules. 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) 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,
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Appendix A

Joint Ventures between MUFG and Morgan Stanley