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452 Fifth Avenue
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July 13, 2015

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent, Release No. 34-74834, File No. S7-06-15 (the "Proposed Rules")¹

Dear Secretary Fields:

HSBC Bank USA, N.A. ("**HBUS**") on behalf of itself and its affiliates worldwide (collectively, "**HSBC**"), welcomes the opportunity to provide the Securities and Exchange Commission (the "**Commission**") with comments on the Proposed Rules.

Our comments focus on steps that we believe the Commission should take to avoid disproportionate, and likely unintended, adverse effects on globally active firms that operate through multiple local subsidiaries, rather than local branches of a single bank. Our recommendations are generally consistent with those made by the Institute of International Bankers, the Securities Industry and Financial Markets Association and the International Swaps and Derivatives Association, Inc., whose comment letters we support. We are also writing separately, however, because we believe that the implications of the Proposed Rules for HSBC and other firms with similar operating structures bear additional attention by the Commission.

I. Discussion

Our concerns stem from the proposal to require a non-U.S. person, which is not a conduit affiliate or guaranteed by a U.S. person, to count a security-based swap ("**SBS**") dealing transaction with another non-U.S. person toward the non-U.S. dealer's aggregate, group-wide security-based swap dealer ("**SBSD**") *de minimis* calculation, if that transaction is arranged, negotiated or executed by personnel located in a U.S. branch or office of an agent of the non-U.S. dealer.² The costs and burdens of this proposal would have a disproportionate adverse effect on

¹ 80 Fed. Reg. 27,444 (May 13, 2015).

² See *id.* at 27,493-94.



firms, such as HSBC, that transact with non-U.S. counterparties through multiple locally organized and regulated subsidiaries. In contrast, firms that transact through local non-U.S. branches of a U.S. or non-U.S. bank that is already registered as an SBSB will generally not need to modify their operations to the same extent to comply with this proposal.

By way of background, HSBC's U.S. sales and trading personnel are concentrated among employees of HBUS, which we anticipate will register as an SBSB, and HSBC Securities (USA) Inc., which is a registered broker-dealer. Further, HSBC SBS activities are predominantly booked to HBUS or to HSBC Bank plc ("**HBEU**"), which we also anticipate will register as an SBSB. As a result, the SBS activities of such personnel are or will be subject to comprehensive regulation by the Commission by virtue of the Commission's regulation of these entities. Occasionally, however, our U.S. sales and trading personnel arrange, negotiate or execute SBS entered into between other, non-U.S. HSBC group entities and their local, non-U.S. counterparties. This activity frequently takes place as a result of time zone differences (*i.e.*, outside the local market hours of the relevant non-U.S. HSBC group entity) or due to the particular underlier of the SBS and the related market expertise of the relevant U.S. personnel.

Although the volume of this activity is unlikely to be significant relative to the aggregate SBS activity engaged in by HBUS and HBEU, the number of counterparties and HSBC group entities potentially affected by the proposal would be quite significant. HSBC provides risk management products (including swaps and SBS) to its customers in approximately 60 jurisdictions. In general, this is done through separately capitalized banking subsidiaries of HSBC Holdings plc. These subsidiaries are not guaranteed or owned by HSBC's U.S. entities. Registering a large number of these subsidiaries as SBSBs would involve significant costs and legal and logistical challenges, both for the relevant subsidiaries and for the Commission in conducting oversight of those subsidiaries as registrants.

Significant inherent challenges also exist with respect to establishing and maintaining a robust control framework for tracking the aggregate volume of SBS transactions arranged, negotiated or executed by U.S. personnel on behalf of all of the group's non-U.S. subsidiaries. It is also not practical for local, non-U.S. customers to move their SBS trading relationships to a registered SBSB affiliate such as HBUS or HBEU, since SBS trading activity is just a component of the much broader commercial or investment banking relationships that those customers have with their local HSBC entity. Customers also prefer dealing with local HSBC entities, rather than one in a different jurisdiction, for a number of reasons. These include having a single point of contact for all HSBC relationships, optimization of collateral arrangements, the ability to be governed by local, rather than foreign law, and regulatory requirements (*e.g.*, certain products in certain jurisdictions can only be entered into by a client with a locally incorporated or licensed entity).

Other firms that plan to operate through registered SBSDs with local branch networks would not face similar issues. In both cases, however, the relevant U.S. personnel would be subject to comprehensive Commission regulation. In particular, the requirements applicable to U.S. SBSD or broker-dealer personnel acting on behalf of a non-U.S. subsidiary – including extensive sales practice and recordkeeping rules – would address the key policy interests implicated by such personnel’s interactions with non-U.S. counterparties. Those requirements would be the same as, or comparable to, the requirements that would apply to the arrangement, negotiation and execution of the transaction if the relevant non-U.S. subsidiary registered as an SBSD. The additional entity-level rules that would come with registration of non-U.S. subsidiaries as SBSDs would provide no additional benefits since no risk-based nexus would exist between those subsidiaries and the U.S. financial system. Alternative recordkeeping requirements could also ensure equivalent Commission access to related books and records located abroad.³ As a matter of policy, we do not believe that the Commission intended to modify its rules in a manner that would have a severe and disparate impact on a subset of market participants who have organized their global operations through a subsidiary structure for *bona fide* commercial reasons and without any intent (or effect) of regulatory avoidance.

The benefits of registration as an SBSD with the Commission should be weighed against the costs of such registration (which would be particularly extensive for non-U.S. firms). Those costs would outweigh the benefits in circumstances where no U.S. person is a party or guarantor to the relevant SBS transaction and any U.S. affiliate and its personnel involved in arranging, negotiating or executing the transactions are subject to regulation by the Commission. In such circumstances, we do not believe the disparate treatment of firms using affiliate versus branch structures is warranted or desirable.

II. Recommendations

In light of the foregoing considerations, we do not believe that the Commission should modify its SBSD *de minimis* calculation to require a non-U.S. person, which is not a conduit affiliate or guaranteed by a U.S. person, to count an SBS dealing transaction with another non-U.S. person, solely because the transaction is arranged, negotiated or executed by personnel located in a U.S. branch or office, especially where such personnel are located in a branch or office of a registered U.S. SBSD or broker-dealer affiliate.

If the Commission nonetheless decides to make such a modification, then a transition period of at least 12 months will be necessary before the modification can take effect. Compliance with such modification would require designing, building, testing and implementing a global control framework, moving personnel overseas and possibly registering additional entities as SBSDs. None of these steps can occur very quickly.

³ For example, the Commission could require the relevant non-U.S. subsidiaries to provide the Commission with access to books and records, as the Commission currently requires for foreign broker-dealers under Rule 15a-6(a)(3). See 17 C.F.R. § 240.15a-6(a)(3).



Additionally, we note that the *de minimis* calculation generally requires a group to count its SBS dealing transactions over the previous 12 months.⁴ Due to the need to implement a control framework to track U.S. personnel involvement in advance of registration, it would be important for the Commission to clarify that any modification to the *de minimis* calculation would only apply prospectively for covered SBS executed after an appropriate transition period.

* * *

Thank you for your attention to HSBC's comments on the Proposed Rules. We would welcome the opportunity to provide additional information that the Commission may consider helpful.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Mark A. Steffensen", with a long horizontal flourish extending to the right.

Mark A. Steffensen
Managing Director and General Counsel
HSBC Securities (USA) Inc.

⁴ See 17 C.F.R. § 240.3a71-2(a)(1).