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November 14, 2011

David A. Stawick
Secretary
Commodity Futures Trading
Commission
Three Lafayette Centre
1155 21st Street, NW.
Washington, DC 20581

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

RE: File Number S7-16-11 - Proposed Rulemaking - Further Definition of "Swap"

Dear Mr. Stawick and Ms. Murphy:

The Travelers Companies Inc. thanks you for the opportunity to submit comments with respect to the proposed rules and interpretations of the Commodity Futures Trading Commission ("CFTC") and Securities Exchange Commission ("SEC", and collectively, with the CFTC, the "Commissions") included in Releases 33-9204 and 34-64372, entitled "Further Definition of 'Swap,' 'Security-Based Swap,' and 'Security-Based Swap Agreement'; Mixed Swaps; Security-Based Swap Agreement Recordkeeping," as published in the Federal Register on May 23, 2011 (the "Releases").

The Travelers Companies Inc., through its regulated insurance company subsidiaries (collectively, "Travelers"), is one of the largest providers of property and casualty insurance and surety and fidelity products in the United States.

Given Travelers' role in the property and casualty insurance industry, Travelers has a particular interest in proposed CFTC Rule 1.3(xxx)(4) and proposed SEC Rule 3a69-1(a), which we understand are intended to clarify that the definition of "swap" in Section 1a(47) of the Commodity Exchange Act does not include traditional insurance products.

Travelers agrees entirely with the Commissions' conclusion that Congress did not intend to include insurance products within the definition "swap." We also agree with the general approach the Commissions suggest of having both a specific "safe harbor" setting forth insurance products that are exempted from the swap definition and a general test whereby other insurance products could be excluded. However, we believe that certain relatively modest, but important,

changes should be incorporated into the structure of these rules, which we outline in Section A of this letter below. We also believe that certain technical changes to the proposed test of what constitutes an insurance product are necessary to make this test more accurate, which are outlined in Section B of this letter below.

A. Proposed Structural Changes to the Proposed Rules

Proposed Rule 1.3(xxx)(4) and Proposed Rule 3a69-1(a) each contain a two-part test that the Commissions will employ in determining whether an insurance product would be expressly excluded from the definition of a "swap."¹ The proposed two-part test requires that the insurance product qualify under the standards proposed in CFTC Rule 1.3(xxx)(4)(i) (the "Product Test") and the issuer of such product be one of the entities described in CFTC Rule 1.3(xxx)(4)(ii) (the "Entity Test"). Separately, the Releases also stated that the Commissions were proposing interpretive guidance that would exclude "surety bonds, life insurance, health insurance, long-term care insurance, title insurance, property and casualty insurance, and annuity products the income on which is subject to tax treatment under section 72 of the Internal Revenue Code" from the swap definition. 76 Fed. Reg. 29824. In our view, this proposed construction raises two primary issues.

First, the Product Test is insufficiently broad. The Product Test would not include each of the products that is intended to be excluded from the definition of "swap" based upon the product list included in the proposed interpretive guidance. For example, surety bonds, which are clearly intended to be excluded from the definition of "swap," would generally not appear to satisfy the Product Test. This is due, in part, to the fact that, although surety bonds may only be issued by an insurance company under state law, surety bonds are not insurance policies protecting a policyholder from a risk of loss. Rather, a surety bond is issued by an insurance company to protect a third party (an "Obligee") against the non-performance by the purchaser of such surety bond (the "Obligor") of a separate obligation. If the Obligor fails to perform such obligations, the insurance company is obligated to pay the Obligee an amount set forth in the surety bond. Generally, such surety bonds do not require the Obligee to prove an amount of loss or require that the Obligee maintain an "insurable interest" in the Obligor's performance during the term of the surety bond, which are two of the primary requirements set forth in Product Test.

Other products, such as annuities, which may only be issued by insurance companies, but which are not insurance policies, also do not appear to satisfy the Product Test. Like surety bonds, annuity products do not contemplate the existence of an insurable interest nor require proof of loss as a requirement for payment. In addition, even traditional insurance policies would not appear to completely satisfy the tests as proposed. For example, liability

¹ Unless otherwise noted, for purposes of this letter, the term "swap" includes the term "security-based swap."

insurance does not require that the beneficiary of the policy maintain an insurable interest in the subject of the agreement and life insurance generally only requires that the purchaser holds such an insurable interest at the policy's inception, not for its duration.

Given that many of the proposed products to be excluded from the swap definition would not appear to satisfy the Product Test, using interpretive guidance to exclude these products from the definition creates a genuine risk for insurers. Specifically, insurance companies and state insurance regulators would be faced with the risk that such guidance could change or be withdrawn by the Commissions in the future, with or without undergoing a formal rulemaking process. As a result, insurance companies would be unable to determine which regulatory regime would apply with respect to their products and insurance regulators would be unable to determine which of their regulations would be preempted by federal regulation. To avoid this uncertainty, we believe it is essential to enact a specific safe harbor rule that will specifically exclude the enumerated products from the swap definition.

Further, although the list of enumerated insurance products itself provides useful guidance as to the types of insurance products that are intended to be excluded from the definition of swap, the proposed list only includes a limited number of the broad array of insurance products that are subject to regulation by state insurance regulators. To clarify that the list is illustrative rather than exhaustive, we believe language should be included in the proposed rules indicating that products that are determined to be insurance contracts by insurance regulatory authorities and are regulated as such or are otherwise reportable to insurance regulatory authorities (and therefore subject to their oversight) are excluded from the definition of swap, which exclusion would include products such as those specifically enumerated by the Commissions in their proposed interpretative guidance but would not be expressly limited to such enumerated products. This approach is consistent with the intent of the Dodd-Frank Act to have swap regulation provide regulatory oversight to products that were not already subject to an existing regulatory regime (such as state insurance regulation), rather than to have swap regulation supplant existing regulatory regimes.

The Entity Test presents another structural problem. As proposed, only those insurance products that are issued by insurance companies or other enumerated entities would be expressly excluded from the swap definition. As a result, there would be uncertainty as to whether an insurance product issued by a company other than an insurance company would be considered a swap. If such product were to be considered a swap merely because it was not written by an insurance company, this would render the regulation of such products outside of the scope of state insurance laws, as a result of the federal preemption for the regulation of swaps as contemplated by Section 722 of the Dodd-Frank Act. As a consequence, the same product would be regulated in substantially different ways based solely on the type of company issuing the particular product. This preemption of state regulation also would, unintentionally, prevent state insurance regulators from prosecuting the company issuing such product for conducting an insurance business without a license and would also prevent state insurance regulators from

enforcing consumer protection laws with respect to such products. The uncertain status of federal preemption with respect to such conduct could lead to unintentional gaps in regulatory oversight and could result in companies that should properly be regulated as insurance companies being regulated in some fashion by the Commissions.

In order to avoid this unintentional result, we would suggest that the insurance product exclusion in CFTC Rule 1.3(xxx)(4) and SEC Rule 3a69-1(a) provide an express safe harbor exempting the enumerated traditional insurance products, as well as other products that are subject to oversight by state insurance regulatory authorities, without regard to the entity that issues such products. At the same time, the Product Test and Entity Test would be retained as a second safe harbor for other insurance products that would otherwise properly fall within the domain of state insurance regulators. We believe this test strikes an appropriate balance of ensuring that traditional insurance products and other products regulated by state insurance regulators continue to be subject to state oversight, while preserving the ability of the Commissions to regulate any other financial products to ensure that there are not any unintentional gaps in regulatory oversight. Proposed language for CFTC Rule 1.3(xxx)(4) intended to accomplish this result is included as Appendix A for the Commissions' consideration. Also attached as part of Appendix A is a black-line showing our proposed language changes to the proposed rule.

B. Proposed Changes to the Product Test and Entity Test

In addition to the changes discussed above, we also believe some minor changes to both the Product Test and the Entity Test would help enhance the usefulness and accuracy of these tests for purposes of identifying insurance products. First, with respect to the Product Test, we propose that the Commissions delete the proposed requirement that the beneficiary hold an insurable interest "continuously throughout the duration of the agreement, contract or transaction." While many insurance products require the existence of an insurable interest, it is relatively uncommon for such insurance products to require the beneficiary to hold such insurable interest for the entire term of the contract or policy. For example, in the case of property insurance, an insurable interest must generally be demonstrated at the time of the loss, but it would not generally be necessary to evidence that an insurable interest was held continuously throughout the policy period. Similarly, with respect to life insurance, the purchaser must hold an insurable interest at the time the policy is issued, but is not generally required to do so throughout the term of the policy or at the time of death.

With respect to the second prong of the Product Test, we would propose that the Commissions delete the proposed requirement that "any payment or indemnification [with respect to losses] be limited to the value of the insurable interest." While insurance products generally require proof of a loss (or at least proof of the occurrence of a contingency) as a condition for payment thereunder, many insurance and reinsurance products offer benefits that are not directly based upon actual losses incurred. For example, many traditional insurance

products offer the fixed payment of contractual benefits upon the occurrence of a loss or contingency without requiring separate proof of the actual amount of such loss or that loss be tied to the value of an insurable interest.

We also propose minor changes to the Entity Test to more accurately encompass the types of entities that may lawfully issue insurance products under state insurance laws. With respect to the first prong, we propose to include not only insurance companies, but also similar entities or associations, which would extend the coverage of this provision to encompass captive insurers, Lloyds associations, risk pools and other similar entities or groups that are permitted under state insurance laws to offer insurance products, but which are not organized as "insurance companies" in the traditional sense. We also propose to delete the requirement from the first prong of the Entity Test that "such agreement, contract or transaction is regulated as insurance under the laws of such state or the United States." This requirement is redundant because of the Product Test and, if applied in the Entity Test, could inadvertently exclude products that are either issued on a non-admitted basis through a surplus lines broker or which may not be specifically regulated as "insurance" (such as in the case of surety bonds or annuity products).

We would also recommend adding a new second prong to the Entity Test to cover specifically domestic or foreign insurance companies/entities, Lloyd's syndicates or similar entities that issue insurance products on a non-admitted basis through surplus lines brokers. Finally, we have also proposed some minor changes to the reinsurance prong of the Entity Test to broaden the test with respect to how losses or claims may be reimbursed, since the actual terms of reinsurance agreements vary significantly as to how such payments are to be calculated and/or made.

Each of the foregoing revisions is reflected in the proposed language included as Appendix A for the Commissions' consideration. As reflected in Appendix A, Travelers proposes that the Product Test and Entity Test, as revised, would serve as a backstop for exempting those insurance products that are not otherwise exempted pursuant to the proposed specific exception for insurance products that are determined to be insurance contracts and regulated by or are reportable to state insurance regulators, as discussed above. We believe that this framework will facilitate the Commissions' ability to prevent companies from abusing the insurance products exclusion from swap regulation, while preserving intact the existing insurance regulatory regime.

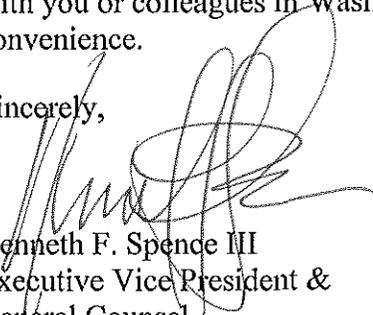
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We appreciate the opportunity to submit these comments and appreciate the time and effort that you and the staff of the Commissions have dedicated to this important issue. We certainly appreciate how difficult it is to draft accurately rules to describe the broad range of insurance and similar products that are regulated by state insurance regulators.

David A. Stawick
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If you have any questions regarding our comments or would like any additional information, please contact Mark Young or Bob Sullivan of Skadden, Arps, Slate, Meagher & Flom LLP at (202) 371-7680 or (212) 735-2930, respectively. In addition, we would also be pleased to meet with you or colleagues in Washington D.C. to discuss these comments in greater detail at your convenience.

Sincerely,



Kenneth F. Spence III
Executive Vice President &
General Counsel

cc: Julian E. Hammer
Assistant General Counsel
Commodity Futures Trading Commission

Proposed Revised Safe Harbor for Insurance Products

Rule 1.3(xxx)(4):

- (4) Insurance. The term 'swap' as defined in section 1a(47) of the Commodity Exchange Act does not include products that are (or which historically have been) regulated by or reportable to the insurance commissioner (or similar official or agency) of any state or by the United States (or an agency or instrumentality thereof) either as policies or contracts of insurance or reinsurance or as policies or contracts that may only be lawfully issued by an insurance company (or similar entity or association) subject to the supervision of any such official or agency, which products shall include, but not be limited to, surety and fidelity bonds, life insurance, health insurance, long-term care insurance, title insurance, property and casualty insurance and annuity products and the reinsurance of any of the foregoing. In addition to these products, the term swap also shall not include an agreement, contract, or transaction that:
- (i) by its terms or by law, as a condition of performance:
 - (A) Requires the beneficiary of the agreement, contract, or transaction to have an insurable interest that is the subject of the agreement, contract, or transaction;
 - (B) Requires that a loss or related contingency occur and be proved;
 - (C) Is not traded by the policyholder or beneficiary, separately from the insured interest, on an organized market or over-the-counter; and
 - (D) With respect to financial guaranty insurance only, in the event of payment default or insolvency of the obligor, any acceleration of payments under the policy is at the sole discretion of the insurer; and
 - (ii) Is provided:
 - (A) By a company that is organized as an insurance company (or similar entity or association) whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies and that is subject to supervision by the insurance commissioner (or similar official or agency) of any state or by the United States or an agency or instrumentality thereof;
 - (B) In the case of non-admitted insurance placed by a licensed surplus lines broker, by a company that is organized as an insurance company (or similar entity or association) whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies and that is subject to supervision by the insurance commissioner (or similar official or agency) of its jurisdiction of incorporation or organization;

- (C) By the United States or any of its agencies or instrumentalities, or pursuant to a statutorily authorized program thereof; or
- (D) In the case of reinsurance, by a person located outside the United States to an insurance company (or similar entity or association) that is eligible under the proposed rules, provided that:
 - (1) such person is not prohibited by any law of any state or of the United States from offering such agreement, contract, or transaction to such an insurance company (or similar entity or association);
 - (2) The product to be reinsured meets the requirements qualifies as an insurance product under paragraph (xxx)(4) of this section; and
 - (3) The amount reimbursable by such person under such reinsurance is based upon the actual or estimated claims or losses paid or incurred by the cedant.

Proposed Revised Safe Harbor for Insurance Products

Rule 1.3(xxx)(4):

- (4) Insurance. The term 'swap' as ~~used~~defined in section 1a(47) of the Commodity Exchange Act does not include products that are (or which historically have been) regulated by or reportable to the insurance commissioner (or similar official or agency) of any state or by the United States (or an agency or instrumentality thereof) either as policies or contracts of insurance or reinsurance or as policies or contracts that may only be lawfully issued by an insurance company (or similar entity or association) subject to the supervision of any such official or agency, which products shall include, but not be limited to, surety and fidelity bonds, life insurance, health insurance, long-term care insurance, title insurance, property and casualty insurance and annuity products and the reinsurance of any of the foregoing. In addition to these products, the term swap also shall not include an agreement, contract, or transaction that:
- (i) by its terms or by law, as a condition of performance:
 - (A) Requires the beneficiary of the agreement, contract, or transaction to have an insurable interest that is the subject of the agreement, contract, or transaction and thereby carry the risk of loss with respect to that interest continuously throughout the duration of the agreement, contract, or transaction;
 - (B) Requires that a loss or related contingency occur and ~~to be proved, and that any payment or indemnification therefor be limited to the value of the insurable interest~~be proved;
 - (C) Is not traded by the policyholder or beneficiary, separately from the insured interest, on an organized market or over-the-counter; and
 - (D) With respect to financial guaranty insurance only, in the event of payment default or insolvency of the obligor, any acceleration of payments under the policy is at the sole discretion of the insurer; and
 - (ii) Is provided:
 - (A) By a company that is organized as an insurance company (or similar entity or association) whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies and that is subject to supervision by the insurance commissioner (or similar official or agency) of any state or by the United States or an agency or instrumentality thereof, ~~and such agreement, contract, or transaction is regulated as insurance under the laws of such state or the United States;~~

- (B) In the case of non-admitted insurance placed by a licensed surplus lines broker, by a company that is organized as an insurance company (or similar entity or association) whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies and that is subject to supervision by the insurance commissioner (or similar official or agency) of its jurisdiction of incorporation or organization;
- (C) By the United States or any of its agencies or instrumentalities, or pursuant to a statutorily authorized program thereof; or
- (~~E~~D) In the case of reinsurance-only, by a person located outside the United States to an insurance company (or similar entity or association) that is eligible under the proposed rules, provided that:
- (1) such person is not prohibited by any law of any state or of the United States from offering such agreement, contract, or transaction to such an insurance company (or similar entity or association);
 - (2) The product to be reinsured meets the requirements qualifies as an insurance product under paragraph (xxx)(4)(i) of this section ~~to be~~ insured; and
 - (3) ~~the total~~ The amount reimbursable by all reinsurers for such insurance product cannot exceed the such person under such reinsurance is based upon the actual or estimated claims or losses paid or incurred by the cedant.