SOCIETE GENERALE
Corporate & Investment Banking

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U.S. Commodity Futures Trading Commission
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John M. Ramsay
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U.S. Securities and Exchange Commission
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Mark E. Van Der Weide,
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Board of Governors of the Federal Reserve System
2000 L Street, NW
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Dear Messrs. Radhakirshnan, Ramsay and Van Der Weide:

Introduction

Société Générale ("SG") greatly appreciated the opportunity to meet with the Commodity Futures Trading Commission ("CFTC"), the Securities and Exchange Commission ("SEC" and, together with the CFTC, the "Commissions") and the Federal Reserve Board staff on November 15, 2010. We thank all the staff who met with us for their time and attention during this busy period. As requested, this letter is a follow-up to our meetings and puts some of our concerns and proposals in writing in the hope that will help in your consideration of them.

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As we discussed, SG, like many foreign banks, has a significant concern as to how to comply with Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") due to the high risk of overlapping U.S. and home country derivatives regulation and the long lead time needed for complex operational and systems changes necessary for implementation. SG, and other banks based in the European Union ("EU"), will soon be required to comply with the European Market Infrastructure Regulation ("EMIR"), the EU's derivatives legislation. We expect EMIR to be largely similar to Title VII of the Act, but there will be differences in important details. SG and other foreign banks will have difficulties in implementing both sets of rules without further guidance from the relevant regulators.

SG's derivatives business is operated and managed globally and is relatively small in the United States in comparison to its total scope. There is no guidance in the Act as to how to apply Title VII to a global business. SG and, we believe, other foreign banks need to find solutions that will allow us to continue to function globally and implement Title VII locally.

As we discussed in our meetings, we seek clarity on three key implementation issues concerning the Act. We believe these issues affect not only SG but also affect other foreign banks with substantial Swaps[1] operations in the United States. For SG and many foreign banks, clarity on these key issues is a critical and challenging preliminary requirement to operational planning for the implementation of Title VII. These key issues are: (i) definition of Swap Dealer[2] in a manner that is consistent with the policies of the Act as well as with foreign bank regulation, (ii) clarification of the extent of the extra-territorial reach of Title VII, and (iii) certainty on how the capital and margin provisions of Title VII will be applied to foreign banks.[3]

Finally, the global nature of the derivatives business poses challenging questions related to regulatory coordination and harmonization. We believe that considerations of international comity as well as the public policy goals of derivatives regulation on both sides of the Atlantic should lead the U.S. and EU regulators to determine that they can limit their jurisdiction to the part of the Swaps business that they can most practically regulate -- even if they have jurisdiction over a broader range of the Swaps business. In this letter, we set forth our ideas on how such jurisdictional limits might be established.

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[1] In this letter, "Swaps" refers also to Security-based Swaps unless otherwise noted, and both terms shall have the meaning set forth in the Act.

[2] In this letter, "Swap Dealer" refers also to Security-based Swap Dealer unless otherwise noted, and both terms shall have the meaning set forth in the Act.

[3] We raised other important issues in our meetings, including concern about the drafting in Section 716 of the Act, technical interpretation issues with respect to Regulation Y and concerns about the structure of future commission merchants. These remain important issues that need to be resolved to achieve complete implementation of the Act, but we are focusing this letter on the most critical issues at this time.

Definition of Swap Dealer

Foreign Bank Booking Structures

Many foreign banks, including SG, conduct, consolidate and book their Swaps business in a non-U.S. domiciled entity. Such a consolidated booking structure means that, regardless of where a Swap is sold and regardless of the client to whom a Swap is sold, all Swaps are booked in the same legal entity, which is most typically a foreign regulated bank. Although there is no one standard foreign bank booking structure, this global consolidated structure is typical for many foreign banks. All these banks will have difficulty implementing Title VII because it has not been drafted to take into account the realities and complexities of a global business.

There are significant advantages to both the foreign bank and its clients in having one main legal entity for Swaps booking. In the case of SG, these advantages include:

(i) Clients can enter into their Swap transactions with SG, which is the best capitalized and most highly rated entity in the SG group;

(ii) Clients can enter into Swap transactions with a substantial deposit-taking bank and not a separately organized special purpose derivatives dealer that has few assets other than its derivatives book;

(iii) Both SG and its clients can globally manage credit risk through netting and set-off arrangements, which provide significant protection for both parties in the event of the other party's default;

(iv) SG can most efficiently manage its market risk, trading models, documentation, operations and systems, and these efficiencies decrease risk; and

(v) There is increased transparency to regulators with regard to a bank's Swaps business.

Overall, the advantages of carrying out Swaps transactions in and with a foreign bank with a consolidated booking structure help control risk significantly. Such booking also advances the policy goals of reducing risk and providing greater transparency in the financial system. We believe it would be sensible for the Commissions to craft regulations that do not discourage foreign banks such as SG from registering as Swap Dealers.

In considering how to comply with Title VII, foreign bank derivatives dealers must initially determine which legal entity will register as a Swap Dealer. We believe that, as a policy matter, the Commissions should adopt rules that are flexible and responsive to the unique situation of foreign banks, and that recognize different types of Swap Dealers. Registrants should be permitted to choose the registration option that works best for their business while meeting the regulatory goals of Title VII.

One Registration Model: "Foreign Swap Dealer" and "Non-Booking Swap Dealer"

SG prefers to continue to book Swaps in the deposit-taking, principal SG entity located in Paris ("SG Paris").[4] We understand that registering SG Paris as a Swap Dealer might create practical concerns for the Commissions as it initially may seem more difficult to regulate and examine a foreign entity than a U.S. entity. Registering SG Paris could also be a concern for SG's French regulators who would not accept unlimited exercise of the Commissions' jurisdiction in France, especially over businesses not covered by the Act. To address these issues, we propose that SG Paris register with the Commissions as a foreign Swap Dealer (a "Foreign Swap Dealer"), which would be defined by the Commissions in their rulemaking. The Foreign Swap Dealer would be permitted to fulfill most of its Title VII obligations through an affiliated U.S.-domiciled Swap Dealer (a "Non-Booking Swap Dealer"), which would also be registered with the Commissions.[5] The Non-Booking Swap Dealer could be a registered broker-dealer ("BD")[6] and might also become a registered futures commission merchant ("FCM"). The Non-Booking Swap Dealer would be legally obligated, as set forth in the definitions promulgated by the Commissions, to fulfill specific duties on behalf of the Foreign Swap Dealer.[7] Both the Foreign Swap Dealer and the Non-Booking Swap Dealer would be regulated by the Commissions.

We believe that most of the duties of a Swap Dealer as set forth in Title VII could be performed by a Non-Booking Swap Dealer acting on behalf of a Foreign Swap Dealer, either because they are already performed outside of the entity in which Swaps are booked or because systems and procedures could be built to perform such activities outside of the booking entity.[8] The only duties that would be

[4] We have assumed that individual branches of any bank might register as a Swap Dealer without the entire bank becoming a Swap Dealer. This is reasonable as this is how the derivatives business is currently structured; multi-branch entities only deal and/or book derivatives from certain branches and only those branches have obligations to clients.

[5] This proposal assumes that the jurisdictional scope of Title VII will be clarified and appropriately limited. This topic is discussed in this letter under the heading "Clarification of the Extent of the Extra-territorial Reach of Title VII," *infra*.

[6] We have assumed that most Non-Booking Swap Dealers would need to be a BD if they intend to act as agent in Security-based Swap transactions, but this is not essential for our proposed structure.

[7] To be clear, we are not suggesting that a foreign bank be allowed to register as a Foreign Swap Dealer without also having a U.S.-domiciled affiliated Non-Booking Swap Dealer. Rather, the Non-Booking Swap Dealer would be a necessary feature for a foreign booking entity to register as a Foreign Swap Dealer.

[8] The general Title VII duties of a Swap Dealer are:

- submitting all Swaps that are required to be cleared to a clearinghouse and traded on a board of trade designated as a contract market or a securities or exchange or through a swap execution facility;
- reporting Swaps to a Swap data repository;
- real-time reporting of Swap data;

required to be performed by the Foreign Swap Dealer are complying with the clearing and trade execution requirements and booking and holding capital for Swaps. Because these duties are limited, the Commissions should be able to examine them, even though they are performed by a foreign bank, without encroaching on foreign regulators' jurisdiction -- provided that the Swaps under the Commissions' jurisdiction are clearly defined.

Our views are supported by Section 721(a)(49) of the Act, which defines a Swap Dealer as a:

> *person who (i) holds itself out as a dealer in swaps; (ii) makes a market in swaps; (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.*

Section 721(a)(43) contains a wholly parallel definition of Security-based Swap Dealer.

Currently, even though SG books most of its Swaps in SG Paris, many of the SG personnel who do the actual dealing work with regard to SG's U.S. business are located in New York and are employees of either SG Americas Securities, LLC ("SGAS"), SG's New York-based broker-dealer, or SG's New York bank branch. It is these U.S. employees who hold themselves out as dealing in Swaps and who are responsible for booking Swaps into SG Paris (through an internal delegation of authority). A client typically contacts these employees to buy or sell a Swap. These employees provide pricing for Swap transactions and generally engage in activity commonly known in the trade as dealing in Swaps. We propose to centralize these employees in our BD and to register the BD as a Non-Booking Swap Dealer.

- holding capital for Swaps;
- collecting margin for Swaps;
- protecting client margin in segregated accounts, third-party custodians or by the delivery to a clearinghouse;
- enforcing the general business conduct rules and those aimed specifically at "special entities";
- complying with documentation standards;
- maintaining a full compliance regime with respect to Swaps, including trade monitoring, risk management, information disclosure to regulators and conflicts of interest systems;
- recordkeeping and reporting;
- maintaining daily trading records;
- designating a chief compliance officer; and
- determining the type of Swap (mixed, cleared or uncleared) and counterparty (major swap participant, Swap Dealer, "end user" or non-eligible contract participant) and treating each Swap and counterparty in accordance with the Commissions' regulations with respect to that type of Swap.

Through their regulatory authority over the BD, the Commissions will be able to examine for compliance with virtually all of the general duties of a Swap Dealer.[9]

In contrast, SG Paris employees do not generally (i) hold themselves out to U.S. customers as a dealer in swaps in the United States, (ii) make a market in Swaps in the United States, or (iii) engage in activity in the United States that would cause them to be commonly known in the trade as a dealer or market maker in swaps. While we would propose to register SG Paris as a Foreign Swap Dealer, our proposal is based on the assumption that the Non-Booking Swap Dealer would be recognized by the Commissions as the responsible party for the majority of the Foreign Swap Dealer's obligations. The Commissions would be entitled to examine SG Paris for compliance with the clearing, trade execution and capital rules. The Non-Booking Swap Dealer would facilitate this examination by making all necessary information available directly to the Commissions.[10]

We recognize that Title VII does not provide the Commissions with authority to exempt Swap Dealers from registration. Our proposal, therefore, does not envision the Commissions granting any exemption similar to a Part 30 exemption or Rule 15a-6 exemption. SG Paris would be a registered Foreign Swap Dealer under Title VII but would fulfill most of its duties through the Non-Booking Registered Swap Dealer. We believe Title VII provides the Commissions with sufficient discretion and authority to establish through their rulemaking different types and categories of Swap Dealers, so long as the actual Swap dealing activity is regulated in accordance with the Act.

Alternatives to and Consequences of a Rigid Definition of Swap Dealer

One alternative to our proposed definitions of a Non-Booking Swap Dealer and a Foreign Swap Dealer would be to register only SG Paris as a Swap Dealer. We would consider this alternative if we could understand how the Commissions would regulate and examine SG Paris. We believe that French regulators would want to understand the scope of the Commissions' exercise of jurisdiction in France before agreeing to this alternative.

Another alternative would be for SG to divide its derivatives business and put the "U.S." portion into a separate legal entity that would register as a Swap Dealer (a "Newco").[11] Creation of a Newco could, paradoxically, create rather than reduce risk and decrease transparency. For clients, there could be more risk because a Newco would be a less well-capitalized entity than SG Paris. The Newco could

[9] We have assumed that the Commissions will have full examination powers with respect to employees and agents of a Non-Booking Swap Dealer.

[10] We do not expect there to be any issues with the French "blocking statute" because the information required by the Commissions will be readily available to the U.S.-domiciled, New York-based Non-Booking Swap Dealer.

[11] In order to risk manage the Newco, SG might choose to mirror all of its transactions back to SG Paris, which could decrease transparency.

also create more risk for SG because it would fractionalize global risk management of the firm's derivative business, siphon capital from the home country derivatives dealer, and complicate the calculation of capital, thus making it difficult for either home-country prudential or U.S. regulators to assess capital. For both clients and SG, there could be more risk and uncertainty because neither would easily be able to net Swap transactions in the event of the other's default or insolvency. For regulators, there could be less transparency since there would be fewer incentives and policy reasons for foreign regulators to share information with U.S. regulators as the U.S. and non-U.S. Swap Dealers would be acting independently from one another. We believe that the Commissions should write regulations that mitigate rather than augment systemic risk and create global transparency rather than obscure it.

Another alternative would be to use a BD/FCM as the registered Swap Dealer. The capital complications related to using such an entity to book Swaps are severe. BDs and FCMs each have different capital regimes that are not conducive to Swaps booking. SG Paris will be governed by the more restrictive Basel III standards, which we estimate will require SG to hold several billion dollars in additional capital against its Swaps business. How this capital would be allocated and reconciled in the BD/FCM booking entity is unclear.[12]

Even if the capital implications could be resolved, implementing the migration of the U.S. Swaps business from SG Paris to either a Newco or a BD/FCM would be operationally difficult, expensive and challenging in the time frame allotted by the Act for Swap Dealer registration. In addition, either model would require a massive re-papering of each of the bank's client relationships because trading in derivatives is rarely done without signed master agreements. Engaging in re-papering for thousands of clients would be lengthy, would require significant additional staff (and thus be costly) and could not be done before the requirements of Title VII and its implementing regulations are effective. The outcome would be that banks would be restricted in the number of clients with which they can trade for a substantial period of time, resulting in decreased competition and less overall market liquidity.

A third alternative would be for foreign banks to withdraw from the U.S. Swaps market entirely. Writing regulations that might incentivize market players to discontinue operations in the United States is, we respectfully submit, not one of the policy goals of the Act. This would have a significant and immediately detrimental effect on the U.S. economy. Additionally, fewer firms in the United States could lead both to increased prices due to reduced competition and to increased systemic risk since the bulk of the market will be concentrated in fewer players.

[12] In addition, the BD capital rules may require significantly greater capital when client margin is held away from a BD, but Title VII margin rules require Swap Dealers to offer that as an option.

Clarification of the Extent of the Extra-territorial Reach of Title VII

Clear Definitional Boundaries Needed

No matter what Swap Dealer registration alternatives are adopted, it is critical to establish clear boundaries to the jurisdictional reach of Title VII. Title VII of the Act is not applicable to Swaps activities outside the United States unless those activities *"have a direct and significant connection with activities in, or effect on, commerce of the United States"* (*Section 722*). In the case of Security-based Swaps, Title VII does not apply to persons insofar as they transact business *"without the jurisdiction of the United States"* (*Section 772*). To create regulatory certainty about the jurisdictional scope of these sections, we request that the Commissions, by definition, limit the offshore scope of Title VII to a well-defined U.S. part of a foreign bank's Swaps business.

We believe that a foreign bank would be more likely to register as a Swap Dealer under Title VII if the jurisdictional scope of Title VII is clearly defined to apply to a U.S. subset of the bank's global derivatives business. Further, it will be impractical for many foreign banks to register as a Swap Dealer without this definitional assurance from the Commissions. Without such assurances, foreign prudential regulators are not likely to allow foreign banks to register as Swap Dealers because of a concern that the Commissions could apply their regulatory authority to overseas activities that foreign prudential regulators consider their exclusive province. We believe that many foreign banks will benefit from a clarification of the extent of the Act's offshore reach.

We respectfully request the Commissions to coordinate with their foreign counterparts, especially those based in Europe, and to work toward a memorandum of understanding ("MOU") on the jurisdictional reach of U.S./EMIR derivatives rules. An MOU could also outline information sharing, consultation, coordination and cooperation standards in the derivatives markets, which would help increase transparency and comparability of regulation across jurisdictions. Nevertheless, we understand that the Commissions are under significant time pressure to complete their Title VII rulemaking and full international coordination may not be possible in the timeframe. More immediately, we believe the Commissions can give definitional content to Sections 722 and 772 of the Act without full international coordination and that such content should be sufficient to allow foreign banks to begin operational planning for the implementation of Title VII.

Category-Based Definitional Proposal

We propose that Title VII apply only to a clearly defined U.S. subset of a foreign bank's global derivatives business. We have considered how best to draft such definitions. Our proposal, which divides the global Swaps business of a foreign bank into three jurisdictional categories, is set forth below. Each category of activity would be treated differently from a regulatory perspective. Even if the Commissions do not accept this proposal in its entirety, clarification is urgently needed on the jurisdictional issues to allow for timely implementation of Title VII.

Category 1: Swaps activity from within the jurisdiction of the United States

In this category, an employee based in the United States sells a Swap to a customer located either in the United States or offshore. The relevant Swap could be uncleared, or cleared inside or outside the United States on a registered clearing organization. Category 1 is the typical operating model for many clients based in the United States, where they have banking relationships with derivatives dealers and execute derivatives through those relationships interfacing with sales persons in the United States.

Swaps in this category would be fully regulated under Title VII regardless of (i) whether and where such Swaps were cleared, (ii) whether sold to a U.S. or non-U.S. customer, and (iii) whether based on a U.S. or non-U.S. reference asset.

While we believe category 1 is the strongest candidate for the exercise of U.S. regulatory authority, even in this category there could be regulatory uncertainty over Swaps sold to non-U.S. Persons. For example, a Swap sold by a salesperson in the United States to a customer in Germany would be regulated by the Commissions under this category. However, German regulators might assert jurisdiction over this Swap (just as U.S. regulators might assert jurisdiction over Swaps in category 2 below). Mutual agreements among international regulators will be important even within category 1 to bring regulatory consistency to the highly globalized Swaps market.

Category 2: Swaps activity with some U.S. nexus but with a significant risk of competing and conflicting regulation.

In this category, an employee based outside the United States sells a Swap to a customer located in the United States (a "U.S. Person").[13] The relevant Swap could be uncleared, or cleared inside or outside the United States by a clearing house. Some large U.S.-domiciled international clients sometimes trade using this arrangement because they prefer to deal with salespeople close to the source of the product. When buying Swaps linked to a European asset, for example, these clients would prefer to deal directly with SG salespersons in Europe, who have expertise in the product, pricing and market. For these clients, which tend to be large asset managers and hedge funds, it would be impractical to not be able to deal in this manner.

Swaps activity in this category would potentially be subject to both the jurisdiction of Title VII and legislation promulgated by the sales person's home jurisdiction. In the case of SG, a French salesperson might have to comply with Title VII, on the one hand, and the EMIR rules and the rule-making and examination authority of the French financial industry regulator, the Autorité des Marchés Financiers ("AMF"), on the other hand. We recognize that the Commissions may wish to exert

[13] We are using the term U.S. person in a general sense here and not in the sense as proposed by the SEC in its release dated November 19, 2010. Regulation SBSR, Exchange Act Release No. 63446 (Nov. 19, 2010) at 119. We may comment on that proposed definition at a later time.

jurisdiction over activities in category 2 due to the presence of a U.S. Person as the client of SG Paris or the clearance of the Swap in the United States.[14] We suggest that the Commissions reasonably exercise this jurisdiction mainly by relying on the rules and enforcement of EMIR and the AMF. The Commissions would, by rule, apply the requirements of jurisdictions whose regulations support and enforce regulatory objectives that are substantially equivalent to those supported and enforced by Title VII. The Commissions could then by order determine whether the AMF satisfies this requirement. If this determination is made, the Commissions would exercise their regulatory authority over category 2 activities by mainly deferring to the EMIR and AMF.

The Commissions, however, would not cede all regulatory authority over activities in this category. They would retain the authority to conclude at any time that the AMF is not enforcing EMIR and/or that the EMIR rules are not substantially comparable, in which case, the Commissions would exert the full amount of their Title VII authority. We also imagine there could be significant cross-border information sharing among regulators about activity in this category and that the Commissions could have additional transparency on category 2 activities through such sharing.

Given that the United States will implement Title VII earlier than Europe will implement EMIR, we propose that the Commissions establish a transition period for Foreign Swap Dealers with home country regulators that are actively working to establish a comprehensive regulatory framework for swaps and determine at a later specified date whether European rules are substantially equivalent to those of the Commissions. In light of the announcements by the CFTC Chairman that he is *"confident that [the CFTC] will bring strong and consistent regulation to both the European and U.S. swaps markets,"* anticipating in the U.S. regulatory framework the need for a transition period as the systems align would make sense.[15]

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[14] The SEC's recent rule proposal for reporting and dissemination of security-based swap information states that the SEC preliminarily believes that it has jurisdictional authority to compel reporting of security-based swaps executed by a U.S. person anywhere in the world. *Id.* at 118. We may comment on that assertion at a later time.

[15] This "actively working" concept is already used in U.S. law. For example, the International Banking Act permits the Federal Reserve to approve a foreign bank's application to establish a U.S. branch, even though the foreign bank is not subject to comprehensive supervision by its home country authorities, provided that *"the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of such bank."* The Dodd-Frank Act itself also reflects this concept by permitting the SEC to terminate the broker-dealer registration of a foreign person that poses a risk to U.S. financial stability *"if the SEC determines that the home country of the foreign person has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk" (Section 173(c))* and by permitting the Federal Reserve to do the same with respect to a U.S. branch, agency or commercial lending company of a foreign institution *(Section 173(a)).* In other cross-border contexts as well, the SEC has adopted transition concepts such as in the implementation of International Financial Reporting Standards and Section 404 of the Sarbanes-Oxley Act.

We believe that there are strong public policy and practical reasons for the Commissions to adopt the category 2 approach of deference to foreign regulators where the foreign regulators have a comparable regulatory scheme. There are many reasons why the Commissions should consider this approach:

- It respects the prudential regulatory authority of foreign regulators. This is important generally and in respect to category 1, where there will be Swaps sold from the United States to non-U.S. Persons. Regulators in the jurisdictions of those non-U.S. Persons might want to assert regulatory authority over those transactions. The Commissions could point to their regulatory forbearance in category 2 as a policy reason why foreign regulators should not assert their authority over activity occurring mainly in the United States.

- It helps to avoid regulatory retaliation against category 1 activity by foreign regulators, the disruption and cost of which could be significant to U.S. and foreign banks. Without mutual cooperation between the U.S. regulators and foreign regulators, we are concerned that the regulation of the Swaps market could devolve into regulatory chaos, thereby increasing systematic risk.

- It helps to minimize regulatory uncertainty resulting from compliance with multiple and competing regulations. Regulatory uncertainty can allow for regulatory arbitrage while clear rules on jurisdictional issues decreases the possibility of regulatory arbitrage.

- It allows foreign banks to avoid or significantly lessen the problem of competing regulatory authority. While we believe that the EMIR rules will be substantively the same as those in Title VII, there are small differences that will have a big impact on implementation. For example, Title VII requires Swap Dealers to distinguish between their clients that are Swap Dealers, Major Swap Participants or neither but meet the so-called commercial end user definition. EMIR also categorizes clients but does so differently, into financial and non-financial counterparties using numerical thresholds.

- It avoids challenges to Title VII rulemaking regarding the extent of U.S. extraterritorial jurisdiction based on principles set forth by the U.S. Supreme Court in *Morrison v National Australia Bank Ltd.*, 130 S.Ct. 2869 (2010).

- It allows foreign banks to comply with foreign privacy rules which, in general, may prohibit the reporting of certain information relating to certain clients.

- Finally, it allows the Commissions to use their limited resources efficiently without compromising their duty to ensure effective oversight of the Swaps market.

If the Commissions do not rely on home country regulation of category 2 activities, foreign banks may be forced to refrain from dealing with U.S Persons from outside the United States, which would deprive U.S. Persons from access to the most knowledgeable expertise about non-U.S derivative products.

Finally, even if the Commissions believe that certain of the Title VII Swap Dealer duties are so significant that they cannot defer to a foreign bank's home-country regulations for these duties, we suggest that the majority of Title VII duties can be treated in the manner we have described. For example, the Commissions may conclude that there are no "special entity" business conduct rules in EMIR and therefore apply their special entity business conduct rules to category 2 activities. Notwithstanding such a determination, it would still be reasonable for the Commissions to rely on EMIR rules for other aspects of Title VII compliance.

<u>Category 3: Swaps activity that does not have a U.S. nexus.</u>

In this category, an employee based outside the United States sells a Swap to a customer located outside of the United States. The relevant Swap could be uncleared or cleared. Swaps in this category have no nexus to the United States other than that, in our model, they are booked in a registered Foreign Swap Dealer.

Swaps in category 3 should be entirely ring-fenced and outside the scope of the Commissions' examination and regulatory authority. This is a critical part of our proposal and one that we believe will be a requirement for our home-country regulators to accept Foreign Swap Dealer registration. Even if the Commissions believe that they have jurisdiction over these activities, we recommend that they not exercise such jurisdiction. We recognize that the SEC preliminarily believes it has jurisdiction, at least with respect to its reporting rules, over any Security-based Swap cleared through a clearing agency having its principal place of business in the United States, even if the Security-based Swap is entered into between two non-U.S. Persons acting outside the United States.[16] If the SEC continues to believe this, and if the CFTC takes this position as well, we believe that the Commissions could require that this narrow subset of category 3 activity be reported to a Swap data repository without exercising further jurisdiction over all the activity in category 3. This solution would provide the Commissions and U.S. market participants with information about Swaps cleared in the United States without conflicting with foreign regulatory schemes.

Further, in preliminary response to the CFTC's request for comment as to what level of Swap dealing activity outside the United States would qualify as having a direct and significant connection with activities in or effect on commerce of the United States,[17] we firmly believe that where a non-U.S. entity based outside the United States engages in Swaps with persons outside the United States, such activity should not give rise to Swap Dealer registration.

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[16] Regulation SBSR at 120.

[17] Registration of Swap Dealers and Major Swap Participants, RIN 3038-AC95 (November 10, 2010) at 16.

As mentioned at the beginning of our letter, the global nature of Swaps activities poses significant and challenging jurisdictional questions. We believe that even if the Commissions determine they have jurisdiction over all Swaps of a foreign bank Swap Dealer, that they limits their exercise of such jurisdiction to a particular sub-set of Swaps.

Timing of Jurisdictional Clarity

It is critical to obtain certainty regarding the jurisdictional scope of Title VII as early in the rulemaking process as possible. Whether an entity is registered as a Swap Dealer, Foreign Swap Dealer, or Non-Booking Swap Dealer, the internal changes required by any major foreign derivatives dealer, such as SG, are significant. Most dealers maintain numerous transaction booking, risk management, client referential and data processing systems that operate globally. These systems are complex and highly interconnected. Virtually all of these systems will have to change in order for any type of Swap Dealer registration to be operationally implemented. Systems changes are time consuming, costly and require extensive testing prior to use. We have considered the changes that we would need to undertake in order to achieve compliance with the Act by the implementation date and these cannot be done in a short time frame. We urge the Commissions to appreciate the ramifications that their rulemaking will have on globally operating foreign (and U.S.) banks and to provide clarity on jurisdictional issues as quickly as possible.

Application of Title VII Capital and Margin to Foreign Banks

Sections 731 and 764 of the Act state that the Federal Reserve is responsible for setting the prudential requirements for registered Swap Dealers that are subject to its supervision, such as foreign banks. The Federal Reserve will be responsible for setting the capital and margin requirements for SG Paris as a registered Swap Dealer because SG's New York branch is supervised and regulated by the Federal Reserve. We believe that the Federal Reserve should look to the prudential requirements of foreign prudential regulators in setting such requirements for foreign banks, at least where the Federal Reserve finds that the foreign prudential regulator has comparable prudential standards. In the case of SG, the Federal Reserve would defer to the Autorite de Contrôle Prudentiel (the "ACP"), SG Paris's home country banking regulator.

Capital

The Federal Reserve should be comfortable deferring to prudential requirements of foreign regulators, such as the ACP, that have adopted Basel capital standards. As a result of the Basel Capital Accords, there is now greater consistency of capital requirements across the United States and other countries, and with the impending adoption of Basel III in the United States, Europe and Asia, capital requirements for participating countries' banks will be even further aligned. In accordance with Basel capital standards, foreign banking regulators will require foreign banks to hold greater capital to support their Swaps business. The new leverage ratio under Basel III will measure capital to total exposure, the latter of which will include derivatives exposure. In addition, the Basel Committee on Banking

Supervision recently reaffirmed its agreement to introduce higher capital requirements for trading book exposures, counterparty credit risk and exposure to other financial institutions. The new Basel III capital requirements are expected to be promulgated into law in 2011 and implemented in January 2013 as part of the broader European derivatives reform.

Imposing U.S. capital rules on foreign bank Swap Dealers would be potentially unworkable because the foreign bank would continue to also be subject to home country capital requirements. If the Federal Reserve were to apply U.S. capital rules to a foreign bank Swap Dealer, the foreign bank would need to monitor and report on its compliance with two different capital regimes, each of which has its own definitions, parameters and qualifications. This would be contrary to the Federal Reserve's current regulation of foreign banks with respect to capital. The Federal Reserve generally relies on the home country's classification of capital and determination that a foreign bank is well-capitalized for purposes of treating the bank as a financial holding company and applying the source of strength requirement to foreign banks. In doing so, the Federal Reserve defers to the home country and does not substitute its view of the quality of a foreign bank's capital components. We request that this long-standing practice of relying on home country prudential requirements also be applied to Swap Dealer regulation under Title VII.

Margin

We believe that the Federal Reserve should also look to foreign regulators in setting margin requirements for foreign bank Swap Dealers. The Basel Committee has agreed on tougher margin requirements for swaps, and margin requirements will be reflected in the EMIR rules.[18] However, because both the United States and the European Union have yet to determine the specific margin amounts for uncleared Swaps, the Federal Reserve could consider applying U.S. margin requirements for Swaps that are part of a foreign bank's U.S. business until this issue is resolved in Europe and comparisons to U.S requirements are possible. If the Federal Reserve were to reach this conclusion, it would be critical for the Commissions to resolve the extraterritorial scope issues so that foreign banks can implement these requirements.

[18] Cleared transactions will be required to comply with clearinghouse margin rules. We have assumed that the clearinghouses will be either registered with the Commissions or subject to their regulatory oversight.

Conclusion

Société Générale takes seriously its obligation to comply with the highest standards of law in every jurisdiction in which it does business and intends to comply in full with the Act. We are committed to implementing Title VII in a timely manner as prescribed by the Commissions' regulations. We hope the Commissions will agree on the need for flexibility in Swap Dealer registration and expeditious regulatory clarity on the extent of extraterritorial jurisdiction under Title VII of the Act and the application of prudential requirements to foreign bank registrants.

Respectfully,

Laura Schisgall