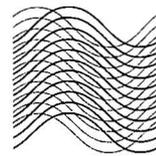


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BaFin | Postfach 12 53 | 53002 Bonn

Ms. Mary L. Schapiro
Commissioner
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
USA

25.03.2011

Reference: BA 54-K 3102-2008/0002 (Please quote in your reply)
2011/0145581

Application of the Dodd-Frank Wall Street Reform and Consumer Protection Act

**Banking
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Dear Commissioner Schapiro,

I would like to take the opportunity of the public consultation on your proposed rulemaking to raise specific concerns regarding the registrations as a swap dealer etc. and the consequences of those registrations. Although I do not intend to formally contribute to your rulemaking consultations I would like to draw your attention to the issue of foreign headquartered banks, i.e. German banks, which are active market participants in the global OTC markets.

The proposed rules related to Section 712(d)(1), Section 721(c) and Section 761(b) of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act further define the terms "swap dealer," "security-based swap dealer," "major swap participant," "major security-based swap participant" and "eligible contract participant". My understanding is that these proposals do not specifically take into account the issue of foreign market participants and therefore could lead to undesired extra-territorial effects. Without questioning the registration of foreign banks, I suppose that such registration will be limited to activities in relation with US counterparties and/or clients and will not involve similar obligations to foreign banks as a whole. The obligations for foreign banks should be proportionate and take into account equivalent requirements in their home jurisdiction.

Given the short timeframe of the proposed rulemakings, I would be glad to discuss with you possible options of cooperation and I am certainly open to further discussions on this issue. Close cooperation of our respective authorities, accompanied by a Memorandum of Understanding, might help to establish an adequate regulatory environment for the

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swap activities of US and German entities and to provide the confidence that the respective national legislation is adequately recognized and complied with.

May I suggest that we get into a dialogue before April 11, ideally by an in-person-meeting either in the US or in Bonn? I look forward to hearing from you and to our cooperation. If you have any questions please do not hesitate to contact my colleagues Mr. Hanenberg (by phone at 0049-228-4108-1582 or email at ludger.hanenberg@bafin.de) or Ms. Grund (by phone at 0049-228-4108-1189 or email at claudia.grund@bafin.de).

Yours sincerely
by order



Thomas Happel
Executive Director Banking Supervision

