

February 22, 2011

SUBMITTED ELECTRONICALLY

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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

RE: Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant”; CFTC RIN number 3235-AK65; SEC Release No. 34-63452; File No. S7-39-10; 75 Federal Register 80174, December 21, 2010

Dear Mr. Stawick and Ms. Murphy:

The American Bankers Association (ABA)¹ and the ABA Securities Association (ABASA)² appreciate the opportunity to provide comments on the joint rules and proposed interpretations by the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) (together, the Commissions) to define further the terms “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant.” We are in the process of analyzing the proposal and intend to submit detailed comments. At this time, however, member banks are still providing us with relevant information that we believe is essential to conduct a thorough evaluation of the proposal. We will submit more extensive comments as soon as we are able to synthesize the information in a manner that will provide more adequate input for the Commissions.

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation’s \$13 trillion banking industry and its 2 million employees. ABA’s extensive resources enhance the success of the nation’s banks and strengthen America’s economy and communities. Learn more at www.aba.com.

² ABASA is a separately chartered affiliate of the ABA that represents those holding company members of the ABA that are actively engaged in capital markets, investment banking, and broker-dealer activities.

We recognize and appreciate that the Commissions' efforts to prepare and promulgate the unprecedented rulemakings, studies, and other guidance required under the Dodd-Frank Act have been extraordinary. Our members' efforts to evaluate those issuances in light of their individual business models and prepare thoughtful, careful, and complete comments have also been unprecedented. In many cases, the volume and breadth of the business-changing rule proposals and the short timeline for comment have overtaxed the resources of bankers to evaluate these proposals while also adjusting or designing operations to comply with new statutory and regulatory burdens and still providing the full and necessary services that our customers rely on. This burden has been especially acute for our smaller members. In many cases the person who would need to evaluate the proposals is the same person involved with compliance activities and providing important customer services. This is no minor task. As of February 14, there have been 1,636 pages of regulatory proposals and 480 pages of final regulations and guidance promulgated under the Dodd-Frank Act alone, apart from other regulatory issues and proposals.

While thorough consideration of this rule proposal is particularly important because it defines the scope of swap and security-based swap market participants, we would also like to take this opportunity to emphasize that the regulatory notice and comment process is meaningful only if both the regulators and the regulated entities have sufficient time to consider each issue, proposal, and related comments carefully. The need for regulatory certainty must be balanced against the need for careful consideration.³ Only with the opportunity for all affected parties to have meaningful deliberation and dialog can we hope to establish a coherent and successful regulatory framework that will actually work.⁴

We would also like to reiterate the comments in a previous submission about the sequence in which rules are being published for comment.⁵ It is difficult if not impossible for our member banks to decide whether or not to comment on rule proposals until they know whether or not the rules will apply to them. A more logical rulemaking sequence would have been to define terms, describe obligations, and then establish registration requirements. Moreover, considering the number of rules needed to create the new derivatives regulatory framework and how interconnected those rules are, it is likely that both regulators and market participants would benefit from the opportunity to consider them together as a whole with another opportunity for notice and comment before finalizing any of them.

³ See letter from ranking Senate Committee on Banking, Housing, and Urban Affairs member Shelby and nine other committee members to Secretary Geithner, Chairman Bernanke, Chairman Gensler, Chairman Schapiro, Chairman Bair, and Acting Comptroller Walsh (February 15, 2011) (expressing concern about the potential economic harm from ill-conceived rules and asking whether additional time would improve the rulemaking process).

⁴ See letter from current House Committee on Financial Services Chairman Bachus and current House Committee on Agriculture Chairman Lucas to Secretary Geithner, Chairman Gensler, Chairman Schapiro, and Chairman Bernanke (December 16, 2010) (encouraging the agencies to "take the time necessary to ensure that implementation of the Act's major overhaul of the derivatives market is done correctly the first time").

⁵ Joint letter to the SEC and the CFTC re: Comment Periods and Implementation of New Derivatives Regulations submitted by the ABA, ABASA, The Clearinghouse Association L.L.C., the Financial Services Forum, the Financial Services Roundtable, the Futures Industry Association, the Institute of International Bankers, the International Swaps and Derivatives Association, the Investment Company Institute, the Managed Funds Association, and the Securities Industry and Financial Markets Association (December 6, 2010).

The definitions in the joint proposal will have profound impact on our member banks and their ability to provide long-term credit for customers and manage financial risk. Accordingly, we appreciate your accommodation in considering our comments as soon as we are able to submit them.

Sincerely,

A handwritten signature in black ink that reads "Diana L. Preston". The signature is written in a cursive, flowing style.

Diana L. Preston
Deputy General Counsel
ABA Securities Association
Vice President and Senior Counsel
Center for Securities, Trust & Investments
American Bankers Association