WHITE & CASE

White & Case LLP
1155 Avenue of the Americas
New York, New York 10036-2787

Tel +1 212 819 8200
Fax +1 212 354 8113
www.whitecase.com

February 22, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Further Definition of "Swap Dealer", "Security-Based Swap Dealer", "Major Swap Participant", "Major Security-Based Swap Participant" and "Eligible Contract Participant" (File Number S7-39-10)

Dear Ms. Murphy and Mr. Stawick:

We are submitting this letter in response to the request of the Commodity Futures Trading Commission (the "CFTC") for comment on the proposed rule of the CFTC under Section 721(a)(49)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). This letter supplements our letter, dated September 20, 2010, to you regarding definitions contained in Title VII of the Dodd-Frank Act (File Number S7-16-10), and in

particular, our discussion of Section 721(a)(49)(A) of the Dodd-Frank Act on pages 46-51 of our letter.

Section 721(a)(49)(A) of the Dodd-Frank Act provides than an insured depository institution (an "IDI") will not be deemed to be a swap dealer to the extent it offers to enter into a swap with a customer in connection with originating a loan to that customer. The CFTC has proposed that this statutory exclusion would apply only to swaps that are connected to the financial terms of the loan, such as, for example, its duration, interest rate, currency or principal amount. The CFTC has requested comment on (i) whether this statutory exclusion should be extended beyond swaps that are connected to the financial terms of the loan and, if so, why, and (ii) whether this exclusion should apply only to swaps that are entered into contemporaneously with the IDI's origination of the loan (and if so, how "contemporaneously" should be defined for this purpose), or whether this exclusion should also apply to swaps entered into during part or all of the duration of the loan.

Section 721(a)(49)(A) of the Dodd-Frank Act refers to a swap entered into in connection with originating a loan. Section 721(a)(49)(A) does not limit the type of swap to interest rate swaps, cross-currency rate swaps or foreign exchange transactions. Section 721(a)(49)(A) does not provide that the swap must pertain to particular financial terms of the loan. The rule proposed by the CFTC so limiting the statutory exclusion is contrary to the express terms of Section 721(a)(49)(A).

Ms. Elizabeth M. Murphy
Mr. David A. Stawick

February 22, 2011

An IDI which enters into a loan with a customer may require the customer to enter into a commodity swap in order to hedge against, among other things, fluctuations in the prices of fuel or other commodities purchased by the customer and of commodities (for example, non-precious metals or energy) sold by the customer. Such requirement is as integral to the IDI's credit analysis of the ability of its customer to repay a loan as are an interest rate swap, cross-currency rate swap and foreign exchange transaction. Unless the customer enters into a commodity swap to hedge against a fluctuation in the price of the relevant commodity, the IDI will not make the loan. The terms of the loan are based on the customer entering into such commodity transaction. While the loan and the commodity swap are distinct transactions, their terms are integrated. For example, the loan and the commodity swap may be secured by the same collateral, and an acceleration of the loan because of the occurrence of an event of default under the credit agreement will result in an early termination of the commodity swap. The commodity swap is entered into in connection with the origination of the loan.

A swap (including a swaption) may be entered into in connection with the origination of a loan (i) prior to execution of the credit agreement and prior to the making of the loan, (ii) at the time the loan is made, or (iii) after the loan is made. For example, prior to execution of the credit agreement and the making of the loan, the parties may enter into an interest rate swap or swaption in order to use a favorable current interest rate when determining the terms of the swap which will hedge the customer's interest rate exposure during the term of the loan. Conversely, after the loan is made but prior to the maturity of the loan, one or more lenders to the customer

which have entered into a swap with the customer in connection with the origination of the loan may cease to be a lender. In such case, the swap may be assigned and novated by the lender who will cease to be a lender to another lender which will become or remain a lender to the customer. The credit agreement will require the customer to maintain the swap and the original swap will have been entered in connection with the origination of the loan. It is appropriate to regard the swap entered into prior to the making of the loan or the novated swap entered into after the making of the loan as being entered into in connection with the origination of the loan, since entering into and maintaining the swap are conditions to the origination of the loan. In the case of a novated swap entered into after the loan is made, if the CFTC regarded drawings under a revolving credit agreement as being separate loans, and the CFTC ruled that a novated swap entered into after a loan is made is not entered into in connection with the origination of a loan, there would be the anomaly of applying the statutory exemption to a novated swap entered into by an IDI in connection with the origination of a new loan under a revolving credit facility but not to a novated swap entered into by the IDI in connection with an outstanding term loan.

We thank you for the opportunity to submit this comment letter. We would be pleased to discuss with you any of the comments we have made herein. Please do not hesitate to contact Steven K. Ross (212-819-8901) if you would like to discuss these matters further.

Very truly yours,

White & Case LLP

WHITE & CASE LLP