

American Bankers Association
ABA Securities Association
Futures Industry Association
Institute of International Bankers
International Swaps and Derivatives Association
Securities Industry and Financial Markets Association

June 6, 2013

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Request for Extension of CFTC Final Exemptive Order Regarding Compliance
With Certain Swap Regulations (RIN 3038-AD85)

Dear Chairman Gensler:

The undersigned associations¹ respectfully request that the Commodity Futures Trading Commission (the “**Commission**”) extend for six months the relief currently in place under the Commission’s Final Exemptive Order Regarding Compliance With Certain Swap Regulations (the “**Exemptive Order**”),² which is set to expire on July 12, 2013. The associations believe that a six-month extension of the Exemptive Order would be helpful for several reasons. First, such an extension would provide sufficient time for swap market participants and for the Commission itself to consider the potential implications of the Securities and Exchange Commission’s (“**SEC’s**”) recent proposals relating to its regulation of cross-border security-based swap activities. Second, as representatives of the European Commission described in their May 28 letter to you (the “**European Commission Letter**”), failing to extend the Exemptive Order in the absence of final cross-border guidance could increase uncertainty for international market participants. Finally, as also described in the European Commission Letter, expiration of the Exemptive Order, or the premature replacement of the Exemptive Order with final cross-border guidance, could jeopardize the productive and cooperative efforts underway towards meeting G20 commitments on an international basis.

¹ Information about each of the trade associations that has signed this letter is contained in the Appendix.

² Final Exemptive Order Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 858 (Jan. 7, 2013).

On May 1, 2013, the SEC proposed rules and interpretive guidance to address the application of its proposed regulations governing cross-border security-based swap activities (the “**SEC Cross-Border Proposal**”) and provided interested parties a 90-day period to provide comments.³ At the same time, the SEC re-opened the comment periods for its previously proposed security-based swap related rules for an additional 60-day comment period, in light of the potential impact on these proposed rules of the SEC Cross-Border Proposal.⁴ Each of these comment periods extends beyond the July 12, 2013 expiration date for the Exemptive Order.

We believe that it is of critical importance, and necessary to ensure compliance with the Dodd-Frank Act, for the Commission and the SEC to harmonize their views of the cross-border application of their respective swap and security-based swap regulatory regimes. Congress, in dividing regulatory jurisdiction over swaps and security-based swaps between the Commission and the SEC in Title VII of the Dodd-Frank Act, explicitly required the Commission to “consult and coordinate to the extent possible with the Securities and Exchange Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.”⁵ We believe that, for the Commission to achieve this important congressional mandate, it is essential that the Commission consider comments received by the SEC in response to the SEC Cross-Border Proposal before issuing its final Title VII cross-border guidance.

Further, based on recent experiences with foreign counterparties, we share the concern raised in the European Commission Letter that the expiration of the Exemptive Order at this time would introduce uncertainty to firms in the swap markets. As the Commission is aware, as the October 12, 2012 deadline to begin counting swaps towards the swap dealer *de minimis* and major swap participant thresholds approached, many foreign market participants began the process of ceasing trading with U.S. entities, overseas branches of U.S. entities and those with U.S. entity affiliates, due to the lack of certainty as to the treatment of such swaps towards the foreign person’s registration threshold. This problem was only resolved when the CFTC staff provided explicit guidance to foreign market participants in the form of a no-action letter. Expiration of the Exemptive Order at this time likewise would lead to confusion and disruption of the international swaps market and the progress that has been made towards compliance with

³ Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, RIN 3235-AL25 (17 C.F.R. pts. 240, 242 and 249) available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-05-23/pdf/2013-10835.pdf>.

⁴ Reopening of Comment Periods for Certain Rulemaking Releases and Policy Statement Applicable to Security-Based Swaps Proposed Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act, RIN 3235-AK74, 3235-AK77, 3235-AK80, 3235-AK79, 3236-AK88, 3235-AK91, 3235-AK93, 3235-AL13, 3235-AL10, 3235-AL05, 3235-AL12 (17 C.F.R. pts. 240, 242 and 249) available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-05-23/pdf/2013-10836.pdf>.

⁵ Section 712 of the Dodd-Frank Act.

Title VII to date. Similarly, we believe that adoption of final cross-border guidance between now and July 12, 2013 would not provide sufficient time for these international market participants to understand and implement the requirements of new final guidance. As a result, we believe that the best solution would be a temporary extension of the Exemptive Order.

Finally, we agree with the European Commission Letter that the Exemptive Order was a “helpful step” towards international coordination on achieving the G20 commitments worldwide. We continue to believe that the international nature of the swap markets makes international coordination, in addition to domestic coordination, critical to achieve an appropriate level of oversight of swaps activities. We appreciate the CFTC’s recent efforts and progress in this regard, including as described in public releases issued by the CFTC and foreign regulators.⁶ We believe that adoption of final cross-border guidance by the CFTC while these productive discussions remain ongoing would threaten their continued progress.⁷ In addition, like the European Commission, we are concerned that expiration of the Exemptive Order at this time could jeopardize this progress. We believe that an extension of the Exemptive Order for six months would provide the necessary time for beneficial international conversations to continue towards resolution.

For these reasons, we respectfully request that the Commission extend the Exemptive Order for six months.

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We thank the Commission for its consideration of our request.

Respectfully submitted,

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⁶ See, e.g., “Report to the G-20 Meeting of Finance Ministers and Central Bank Governors of 18-19 April 2013,” http://www.cftc.gov/PressRoom/PressReleases/odrg_reporttog20release.

⁷ See, e.g., April 2013 European Commission letter to ESMA setting a 25 September 2013 deadline for producing cross border rules as evidence that progress is being made and should be allowed to continue. http://www.esma.europa.eu/system/files/2013_04_17_letter_jf_to_esma-rtS_art_44_and_1114.pdf.

cc: The Honorable Jill E. Sommers, Commissioner, Commodity Futures Trading
Commission
The Honorable Bart Chilton, Commissioner, Commodity Futures Trading
Commission
The Honorable Scott O'Malia, Commissioner, Commodity Futures Trading
Commission
The Honorable Mark Wetjen, Commissioner, Commodity Futures Trading
Commission
The Honorable Mary Jo White, Chairman, Securities and Exchange Commission
The Honorable Jacob J. Lew, Secretary of the U.S. Department of the Treasury

Appendix

The **American Bankers Association** (“ABA”) represents banks of all sizes and charters and is the voice for the nation’s \$14 trillion banking industry and its 2 million employees. Learn more at www.aba.com.

The **ABA Securities Association** (“ABASA”) is a separately chartered affiliate of American Bankers Association, representing those holding company members of ABA that are actively engaged in capital markets, investment banking, and broker-dealer activities

The **Futures Industry Association** (“FIA”) is the leading trade organization for the futures, options and over-the-counter cleared swaps markets. FIA’s mission is to be the global thought leader, advocate and educator for futures and swaps that are centrally cleared. Its membership includes leading derivatives clearing firms as well as major derivatives exchanges and trading systems from more than 20 countries. FIA’s core constituency consists of futures commission merchants, which represent clients active in markets around the world. As the principal members of derivatives clearinghouses worldwide, our member firms play a critical role in the reduction of systemic risk in the global financial markets. They provide the majority of the funds that support clearinghouses and commit a substantial amount of their own capital to guarantee customer transactions. FIA’s membership also includes the major global exchanges, clearinghouses, trading platforms, technology vendors and legal services firms representing this industry.

The **Institute of International Bankers** (“IIB”) is the only national association devoted exclusively to representing and advancing the interests of the international banking community in the United States. Its membership is comprised of internationally headquartered banking and financial institutions from 38 countries around the world. The IIB’s mission is to help resolve the many special legislative, regulatory, tax and compliance issues confronting internationally headquartered institutions that engage in banking, securities and other financial activities in the United States. Through its advocacy efforts the IIB seeks results that are consistent with the U.S. policy of national treatment and appropriately limit the extraterritorial application of U.S. laws to the global operations of its member institutions.

The **International Swaps and Derivatives Association** (“ISDA”) is among the world’s largest global financial trade associations as measured by number of member firms. ISDA’s mission is to foster safe and efficient derivatives markets to facilitate effective risk management for all users of derivatives products. ISDA was chartered in 1985 and today has over 800 member institutions from 58 countries on six continents. These members include a broad range of OTC derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions,

corporations, law firms, exchanges, clearinghouses and other service providers. For more information, please visit: www.isda.org.

The **Securities Industry and Financial Markets Associations** (“SIFMA”) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.