MEMORANDUM

TO: File on Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act
FROM: Richard Grant
RE: Meeting with Representatives of Barclays
DATE: August 2, 2011

On August 2, 2011, representatives from the Securities and Exchange Commission ("SEC") participated in a meeting with representatives from Barclays. The SEC representatives present at the meeting were John Ramsay, Mike Macchiaroli, Brian Bussey, Tom McGowan, Catherine McGuire, Haime Workie, Matt Daigler, Mark Attar, Jack Habert, Jeff Mooney, Kenneth Riitho, Richard Vorosmarti, Cristie March, Kathleen Kim, Miles Treakle, Andrew Bernstein, and Richard Grant. The Barclays representatives present at the meeting were Alex Guest, Chris Allen, Jeff Samuels, Keith Bailey, and Allison Parent. At the meeting, the Barclays representatives provided their views and observations on the application of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act to Barclays' global security-based swaps businesses.

Extraterritoriality Issues under Title VII

Regulating Swaps gives rise to many extraterritorial issues...

Central Booking Model

- Most large non-US banks operate their swaps business on a global basis through a central booking model, booking all or most swaps in their foreign office regardless of counterparty location.
- The regulation by US agencies of the global swaps business of such non-US banks is impractical and inconsistent with Congressional intent, which requires regulators to limit the extraterritorial scope of derivatives regulation. Overly broad reach by US regulators could subject such non-US banks to duplicative, inconsistent and contradictory regulatory requirements, and potential tension with home regulators. Likewise, US regulators would not expect non-US regulators to oversee and regulate US institutions on a global basis.
- Non-US banks should not have to segregate US-facing derivatives activities into separate entities as an alternative to global reach of US regulation and supervision, as this would create inefficiencies in capital, tax, and netting and portfolio margining. In addition, customers would face less credit-worthy and lower-rated counterparties.
- Non-US banks urgently need clear guidance on these issues, because any consequential restructuring and implementation efforts will need to be completed as a threshold matter before registration and compliance can be undertaken (and this will likely require significant time).

Home Regulator Deferral

- Non-US banks should be permitted to register their foreign booking office as a swap dealer, with US regulators limiting their oversight to US-facing derivatives activities, and any US branch retaining its status as non-swap dealer for the purposes of Section 716.
- For entity-level rules such as capital and risk management, US regulators should defer to home regulators' standards so long as the home regulations are comprehensive and based on global standards (e.g. Basel) or otherwise comparable to the US regulatory regime.
- For monitoring purposes, US regulators could rely on information-sharing arrangements with home regulators.

US-Person Facing Activities

- For transaction-level rules, such as clearing, exchange trading, and real-time reporting, it is vital that we have clear, easily implementable rules delineating what is in and out of scope. It is impossible to implement changes necessary to comply with Title VII, including building out new systems and putting in place new documentation, until there is clarity on scope.
- US derivatives regulations should apply only to transactions where one or more of the parties is a "US person" as defined by the SEC's Regulation S.