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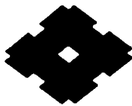


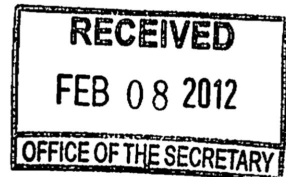
The Sumitomo Trust & Banking Co., Ltd.
NEW YORK BRANCH
527 MADISON AVENUE, NEW YORK, N.Y. 10022

BRUCE A. ORTWINE
Joint General Manager
&
General Counsel

TELEPHONE: (212) 418-4806
FAX: (212) 418-4866
E-mail: bruce.ortwine@sumitomotrust.co.jp

February 3, 2012

Mr. John G. Walsh
Acting Comptroller of the Currency
Office of the Comptroller of the Currency



Mr. Daniel K. Tarullo
Board of Governors of the Federal Reserve System

Mr. Martin J. Gruenberg
Acting Chairman
Federal Deposit Insurance Corporation

Mr. Mary L. Shapiro
Chairman
Securities and Exchange Commission

Re: Proposed Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedger Funds and Private Equity Funds (the "Proposed Restrictions")

Dear Sirs and Madam:

We write this letter on behalf of The Sumitomo Trust & Banking Co., Ltd. ("STB") to comment on certain portions of the Proposed Restrictions identified below that, if enacted, would have an adverse impact on the operations of not only STB, but also most, if not all internationally-based banks, both in the United States and globally.

This letter of comment focuses on the following elements of the Proposed Restrictions.

1. <u>Proposed Liquidity Management Exclusion (Questions 33, 34 and 36)</u>: STB is in agreement that positions for liquidity management should be exempted from the Proposed Restrictions as proposed in Section __.3(b)(2)(ii)(D). The proposed criteria outlined in the proposed liquidity management exemption are, however, too narrowly and rigidly written and lack flexibility that is needed under unusual or unforeseen circumstances. In particular, the fourth criterion, which limits positions taken for liquidity management purposes only to "near-term funding needs, including deviations from normal operations," fails to consider exigent circumstances that would result from an

unforeseeable, market turmoil similar to what occurred post after the Lehman-bankruptcy filing in September 2008. The recent events in Europe in general and Greece in particular reflect the very real possibility that future, unforeseeable market turmoil may very well necessitate taking liquidity management positions far in excess of both near-term needs and deviations from normal operations. Prudent banking practices may well dictate this, which is not adequately addressed in the proposed exclusion.

2. Other Terms Used in the Definition of Covered Financial Position (Questions 52-54): STB requests that FX forward, Non-deliverable forward and Cross Currency swap transactions should be expressly exempted from the definition of "derivative." These types of transactions are critical for prudent liquidity management, as well as for hedging foreign currency denominated assets and liabilities. In particular, FX forward transactions should be exempt as the Secretary of the Treasury has determined that FX forwards should be exempt from the definition of "swap" pursuant to Section 721(a)(47)(E) of the DFA (76 Fed. Reg. 25744; May 5, 2011). For purposes of consistency in the regulation of financial products, FX forward transactions should also be exempt from the Proposed Restrictions.

3. Required Criteria for Permitted Market Making-Related Activities (Questions 87 and 96): Although the proposed Appendix B is intended to provide guidance to banks, as currently drafted, it is too strict and overly rigid, and does not permit the flexibility that a bank must maintain in engaging in legitimate market-making activities. STB believe that the result of Appendix B would be a less liquid and a more shallow and fragile market for legitimate market-making activities. Appendix B should be rewritten in a more simple and more clear manner.

   Also, with respect to Question 96, as a practical matter, we believe it is extremely difficult and potentially burdensome to attempt to separate revenues from fees, commissions, bid/ask spreads or similar income from other types of revenues in a meaningful manner.

4. Permitted Trading in Government Obligations (Questions 119-122): First, with respect to Question 119, third party-issued debt, such as Small Business Administration obligations, which are backed by the full faith and credit of the U.S., should be included within the scope of permissible government obligations. Second, with respect to Question 120, an additional exemption for proprietary trading in State or municipal agency obligations should be included in a manner similar to the scope of proposed Section __.6(a)(ii). Third, with respect to Question 121, derivative products such as government obligations futures and related swaps should be included. Fourth, with respect to Question 122, the obligations of both foreign governments and international and multinational development banks should be included.

   These changes are necessary in order to promote greater liquidity in the market for government obligations and, with respect to foreign government and international and multinational development banks, to prevent the potential for retaliatory prohibitions against non-U.S. banks trading in U.S. government obligations.

5. Permitted Trading Outside the United States (Questions 136-138 and 141): The proposed limitations on trading taking place outside the United States go far beyond the provisions of Section 619 and would represent a significant reversal in the longstanding interpretation of activities that legitimately fall within the scope of Sections 4(c)(9) and (13) of the Bank Holding Company Act. Such a reversal is simply not supported by Section 619 and would represent an overreach of legitimate U.S. jurisdiction over international operations of banks. As one example, activities in which an office located in the United States of a bank, whether U.S. or non-U.S., enters into activities merely as an agent for an office, affiliate or, in the case of a non-U.S. bank, head office, located outside the United States, which entity located outside the United States is booking the transaction and taking the actual credit risk, should be considered activities taking place outside the United States.

6. Reporting and Recordkeeping Requirements (Question 150): First, as currently drafted, the proposed requirements could be duplicative for entities within the same control group. It should be made clear that only one entity within a control group is required to report on behalf of the entire group. Second, in the case of a foreign bank that does not maintain FDIC-insured branches in the United States, the $1 billion and $5 billion thresholds should be restricted only to activities of a foreign bank's U.S. branches and agencies, and not its international activities. Those international operations remain under the jurisdiction and oversight of the foreign bank's home country regulator and are not properly within the scope of the U.S. bank regulatory agencies.

7. Compliance Program Mandate and Appendix C (Questions 319-321): Again, in the case of a foreign bank that does not maintain FDIC-insured branches in the United States, the $1 billion and $5 billion thresholds should be restricted only to the activities of that foreign bank's U.S. branches and agencies and not its international activities. Those international operations remain under the jurisdiction and oversight of the foreign bank's home country regulator and are not properly within the scope of the U.S. bank regulatory agencies.

   Also, the required compliance program should be limited only to a bank's U.S. activities and not its worldwide activities. To impose the types of compliance requirements contemplated by Section __.20 and Appendix C would impose harsh and unreasonable financial and other burdens on a bank, and is beyond the legitimate interests of the U.S. bank regulatory agencies.

In summary, the effect of the Proposed Restrictions would result in the following:

A) It would shift proprietary trading activities from highly regulated banking entities to smaller, non-banks that will not be regulated under the Dodd Frank Act as

systemically important financial institutions. Proprietary trading will therefore become unregulated, which is the opposite result intended by Dodd Frank, will be conducted by firms that have no limitations applicable to banking entities such as limits on leverage, required internal controls and whose activities are otherwise unaccountable. This unintended result of the Proposed Restrictions will only set the stage for the next, "Lehman-like" financial turmoil.

B) Certain proposed provisions, including limiting trading to only U.S. government obligations or to activities "solely outside the United States" represent significant attempted overreaches by U.S. regulatory agencies and a significant reversal of trends towards greater international cooperation and harmony. Such unilateral actions by the U.S. will adversely impact liquidity in international markets potentially the solvency of certain countries' ability to sell their own governmental obligations, and will inevitably invite retaliatory measures by foreign governments against U.S. banks and U.S. government obligations. This can hardly be considered an intended consequence of the Proposed Restrictions.

C) The Proposed Restrictions are so complicated and so susceptible to differing interpretations as to "intent" as to invite regulatory criticisms of specific bank practices during the course of regulatory examinations. This will have a further, "chilling effect" on banking activities, especially when, given recent trends, certain banks are made examples through highly publicized enforcement actions because their interpretations of incomprehensible regulatory requirements do not match those of a particular bank regulatory examiner.

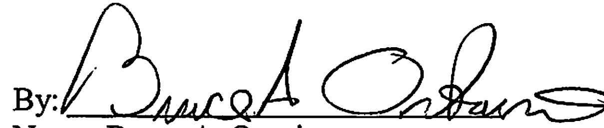
Additionally, we submit that it is extremely unrealistic to expect passage and implementation of a final rule by July 21, 2012, which will be barely more than five months following the February 13 end of the comment period. At this point, it is entirely unclear what the final rule may require, especially given the multitude of questions that the U.S. bank regulatory agencies have themselves raised in the Proposed Restrictions. In order to avoid any further disruptions and burdens that banks are currently enduring in trying to anticipate the shape and substance of the final rule and exactly what they will be required to comply with, the U.S. bank regulatory agencies should issue a joint statement as soon as possible that implementation of a final rule will be delayed for an extended period of time.

Separately, although not related to the Proposed Restrictions, we would like to mention that the exceptions of the limitations in both Sections 716(c) and 721(49)(A)(iv) applicable only to FDIC-insured depository institutions has the effect of discriminating against uninsured foreign bank branches and agencies in the United States. We request that what can only be characterized as unfortunate and unintended language in the Dodd Frank Act be clarified and corrected as soon as is practicable.

Thank you for your due consideration of these comments.

Respectfully submitted,

The Sumitomo Trust & Banking Co., Ltd.

By: 

Name: Bruce A. Ortwine
Title: General Counsel, Americas