May 6, 2011

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

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

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Application of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act to Japanese Bank Groups' Swaps Businesses

Dear Mr. Stawick, Ms. Murphy and Ms. Johnson:

The undersigned three Japanese financial institutions respectfully submit the attached comment letter to the Commodity Futures Trading Commission ("**CFTC**"), the Securities and Exchange Commission ("**SEC**") and the Board of Governors of the Federal Reserve System in relation to the following rule proposals:

- CFTC and SEC Proposed Rule on Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," RIN 3235-AK65, File No. S7-39-10;
- CFTC Proposed Rule on Registration of Swap Dealers and Major Swap Participants, RIN 3038-AC95;
- CFTC Proposed Rule on Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants, RIN 3038-AC96;
- CFTC Proposed Rule on Designation of Chief Compliance Officer and Preparation of Annual Compliance Report, RIN 3038–AC96;
- CFTC Proposed Rule on Implementation of Conflicts of Interest Policies and Procedures by Swap Dealers and Major Swap Participants, RIN 3038–AC96;
- CFTC Proposed Rule on Swap Data Recordkeeping and Reporting, RIN 3038–AD19;
- CFTC Proposed Rule on Reporting, Recordkeeping and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants, RIN 3038–AC96;
- CFTC Proposed Rule on Real-Time Public Reporting of Swap Transaction Data, RIN 3038–AD08;

- CFTC Interim Final Rule on Reporting Certain Post-Enactment Swap Transactions, RIN 3038–AD29;
- SEC Proposed Rule on Reporting of Security-Based Swap Information to Registered Security-Based Swap Data Repositories or the SEC and Public Dissemination of such Information, File Number S7–34–10;
- SEC Proposed Rule on Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies, File Number S7–44–10;
- CFTC Proposed Rule on Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, RIN 3038–AC96;
- CFTC Proposed Rules Regarding Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, RIN 3038-AD25;
- General CFTC Public Roundtable Discussion on Dodd-Frank Implementation; and
- Office of the Comptroller of the Currency, Treasury; Federal Reserve; Federal Deposit Insurance Corporation; Farm Credit Administration; and Federal Housing Finance Agency Proposed Rule on Margin and Capital Requirements for Covered Swap Entities, RIN 2590-AA45.

Should you have questions or concerns, please feel free to contact any of the undersigned or Theodore A. Paradise (+81-3-5561-4430) at the Tokyo office of Davis Polk & Wardwell LLP at your convenience.

Sincerely,

The Bank of Tokyo-Mitsubishi UFJ, Ltd.
Mizuho Corporate Bank, Ltd.
Sumitomo Mitsui Banking Corporation

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Re: Application of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act to Japanese Bank Groups' Swaps Businesses

Dear Mr. Stawick, Ms. Murphy and Ms. Johnson:

The undersigned are Japan's three largest bank groups, each of which engages in swap dealing activities throughout the world, including in the United States. We book swaps primarily in our well-capitalized, highly rated banking institutions, with most swaps in the U.S. market being booked in our U.S. branches. We are writing to request temporary and permanent relief from some of the requirements arising under Title VII ("**Title VII**") of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**").[1]

For convenience, in this letter we refer to swaps and security-based swaps collectively as "**swaps**," and, likewise, the term "**swap dealers**" refers to both swap dealers and security-based swap dealers.

[1] For a more detailed treatment of the legal authority to implement the proposals discussed herein under the headings "Bank-wide Regulation," "Transactions with Affiliates" and "Cross-border Transactions with U.S.-based Swap Dealers," the undersigned hereby refer you to the letter of February 17, 2011, entitled "Supplemental Submission Concerning the Application of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act to the Global Swap Dealing Businesses of Foreign Financial Institutions" (*available at*: http://www.sec.gov/comments/s7-39-10/s73910-25.pdf), delivered to you by the twelve foreign banks signatory thereto. As here, the twelve foreign signatory banks similarly relied upon the regulators' authority to refine the definitions of the terms "swap" and "swap dealer."

Bank-wide Regulation

We respectfully request that the Commodity Futures Trading Commission (the "**CFTC**"), the Securities and Exchange Commission (the "**SEC**" and, together with the CFTC, the "**Commissions**") and the Board of Governors of the Federal Reserve System (the "**Federal Reserve**") adopt implementing regulations under the Dodd-Frank Act with the effect that Japanese banks, including their U.S. branches, are not made subject to the application of Title VII requirements.

According to the recent *communiqué* of the G20 Finance Ministers and Central Bank Governors' Meeting in Washington, the G20 governments agreed to "set high, internationally consistent, coordinated and non-discriminatory requirements in our legislations and regulations implementing [Financial Stability Board] recommendations on OTC derivatives markets" and also "stressed the need to avoid overlapping regulations." By December 31, 2012, we expect that Japanese banks engaged as swap dealers will be subject to comprehensive regulation under Japanese law in a manner consistent with the G20 *communiqué* and that such regulation will extend to all branches of Japanese banks engaged in swap dealing activities, including U.S. branches. The implementation of regulations to exclude foreign banks, including their U.S. branches, from the scope of Title VII's requirements promotes a well-sequenced introduction and mutual recognition of complementary regulatory regimes among the G20 nations.

We book swaps in the U.S. market through our bank branches in the United States and, as a general statement, do not engage in global central booking at our home offices or branches in Japan. (Following the implementation of Title VII, we expect that the only U.S. market swaps not booked in our U.S. branches will be those with U.S. dealers, a subject we discuss below.) We believe that future Japanese regulation of swap activities of Japanese banks will render regulation of such banks subject to Title VII superfluous at best and potentially subject such banks to inconsistent regulations under U.S. and Japanese law.

Transactions with Affiliates

Insofar as the comments above under "Bank-wide Regulation" are not incorporated into the implementing regulations of Title VII, and in any case with respect to non-bank entities within Japanese banking groups, we respectfully request that the Commissions and the Federal Reserve adopt implementing regulations under Title VII such that the requirements of that Title do not apply to transactions between affiliates of a bank group regulated as a bank holding company under the U.S. Bank Holding Company Act ("**BHCA**"). We believe that the regulation of intra-group transactions does not further the objectives of Title VII and that imposing additional requirements would result in overlapping and potentially inconsistent requirements.

We request the following relief with respect to the requirements of Title VII:

- Transactions by a bank group member with other bank group members should not be included in the evaluation of whether such member should be considered a swap dealer or major swap participant.

- Transactions by a bank group member with other bank group members should not be subject to central clearing, exchange/swap execution facility requirements,

collateral, segregation, portfolio compression and reconciliation and documentation requirements for uncleared swaps.

- Unless one of the parties is a registered swap dealer or major swap participant, there should be no swap data repository reporting requirements with respect to transactions by a bank group member with other bank group members.

- Transactions with other bank group members by a group member that is a registered swap dealer or major swap participant should not be subject to business conduct requirements.

Each of the undersigned is regulated as a bank holding company under the BHCA. As such, we and our controlled affiliates are subject to regulation and supervision on a consolidated basis by the Federal Reserve. We believe that, in the case of BHCA-regulated groups, Title VII requirements should not apply to transactions between or among a bank holding company and any entity "controlled" by the holding company within the meaning of the BHCA. This exclusion from the scope of Title VII would be consistent with the scope of comprehensive regulation under the BHCA. The provisions of the BHCA applicable to the undersigned and their controlled affiliates provide the Federal Reserve with ample authority to monitor transactions among affiliates, thereby providing assurance that such transactions exclusively involve intra-group exposures.

Cross-border Transactions with U.S.-based Swap Dealers

Insofar as the comments above under "Bank-wide Regulation" are not incorporated into the implementing regulations of Title VII, we respectfully request that the Commissions and the Federal Reserve adopt implementing regulations under Title VII such that a foreign dealer—particularly a foreign dealer subject to comprehensive regulation in its home country—not be made subject to requirements that would otherwise arise as a result of transactions by the foreign dealer with a U.S.-based dealer regulated as a swap dealer under Title VII.

To the extent that the activities of a home country-regulated foreign swap dealer are restricted to transactions with U.S.-based swap dealers, we believe that imposition of registration, capital, risk management and other entity-based requirements of Title VII on such a foreign swap dealer would not advance the policy objectives of the Commissions or the Federal Reserve in this context. The primary purpose of imposing entity-based requirements on swap dealers is to mitigate systemic risk to the U.S. financial system. In the case of a foreign swap dealer, however, such systemic risk is implicated only to the extent that such dealer trades with U.S. counterparties. If a foreign swap dealer limits its activities to trades with U.S.-based swap dealers who are themselves subject to entity-based regulation, entity-based regulation of the U.S.-based dealer alone is sufficient to achieve the desired reduction of systemic risk. No meaningful additional risk mitigation is likely to be achieved by imposing such regulations on foreign dealers to the extent that such dealers are or will be comprehensively regulated from a systemic risk perspective in their home country jurisdictions as banks, consolidated subsidiaries of banks or other regulated swap entities.

If Title VII requirements are imposed on foreign swap dealers as a result of transactions with U.S.-based dealers, we expect that many foreign swap dealers will

forego the U.S. market and instead seek to trade with dealers outside the United States so as to avoid imposition of Title VII requirements.

Temporary Deferral of Requirements

In light of the ongoing international effort to implement reforms of the OTC derivatives market by December 31, 2012 following the September 2009 meeting of the G20 in Pittsburgh, we respectfully request that the Commissions and the Federal Reserve adopt implementing regulations deferring the effectiveness of the provisions of Title VII until December 31, 2012. As you are aware, Title VII shall become effective 360 days after the enactment of the Dodd-Frank Act. We understand that Title VII implementing regulations may in some cases defer compliance requirements until later dates; however, we remain concerned that even the deferred compliance dates contemplated by the Commissions and the Federal Reserve might still precede the formulation of Japanese and other foreign regulatory regimes.

We respectfully request that the Commissions and the Federal Reserve defer compliance requirements under Title VII until December 31, 2012, at which point the regulatory timetable as per the September 2009 G20 Pittsburgh statement will have reached a conclusion. We believe that such a deferral will facilitate coordination among national authorities in the United States, Japan and other relevant jurisdictions in order to avoid overlapping and inconsistent regulatory regimes.

Conclusion

We believe the requests for relief described above are consistent with the objectives of the Dodd-Frank Act and advance the principles of international comity and a level playing field. We appreciate the opportunity to share our views and recommendations and look forward to working with the Commissions and the Federal Reserve on these and other issues affecting foreign banks. As the regulatory process unfolds, we plan to submit further comment letters to discuss the matters addressed herein in greater detail.

We are available at your convenience to discuss any matters that may be useful to the Commissions and the Federal Reserve in crafting rules applicable to foreign banks. Please feel free to contact any of the undersigned banks via Theodore A. Paradise (+81-3-5561-4430) at the Tokyo office of Davis Polk & Wardwell LLP at your convenience.

Sincerely,

The Bank of Tokyo-Mitsubishi UFJ, Ltd.
Mizuho Corporate Bank, Ltd.
Sumitomo Mitsui Banking Corporation