When: 1/14/2011, 2:00 p.m.

Rulemakings: Definitions
Swap Dealer and Major Swap Participant Registration

Attendees:
Sullivan & Cromwell, LLP
H. Rodgin Cohen
J. Virgil Mattingly
Kenneth M. Raisler
Andrea R. Tokheim
CFTC
DCIO Ananda Radhakrishnan
Barbara S. Gold
Chris Cummings
Elizabeth Miller
OGC Mark Fajfar
Gloria Clement
Lee Ann Duffy
Carl Kennedy
OIA Jacqueline Mesa
Natalie Markman Radhakrishnan

Counsel represents U.S. banks that own foreign entities engaging in swap activities primarily outside of the U.S. Known as "Edge Act Corporations," these subsidiaries of U.S. banks are chartered by the Federal Reserve, typically own foreign banks or have branches in foreign countries, and are heavily regulated by the Federal Reserve, as well as the home country regulator wherever the foreign bank is located. Edge Act Corporations engage in swap activity almost exclusively outside of the U.S., but counsel described several instances where a small amount of U.S. swap activity is also necessary. This group was particularly concerned with how "*de minimis*" swap activity would be defined, *i.e.*, in what amount of U.S. swap activity could a person engage and remain outside of the swap dealer definition. Counsel further explained that the U.S. activities of Edge Act foreign banks are strictly limited by law, such that for any U.S. activity, there must be a "direct and clearly identifiable connection to an international transaction."

Counsel expressed the view that Edge Act foreign banks should be able to engage in the minimal amount of U.S. swap activity required to run their businesses, which would be a very small percentage of their overall swap activities, without coming within the swap dealer definition and having to register as a swap dealer. Counsel also questioned how the CFTC would be determining which banks were swap dealers and whether that determination would count only U.S. swaps or global swap activities, or include internal back-to-back transactions. In support of their position, counsel emphasized that Edge Act Corporations were established after World War I, are a historical part of U.S. banking regulations, and the Dodd-Frank Act did nothing to change the policies applicable to them. Furthermore, counsel stated, Edge Act Corporations are clearly not designed as a tool to evade the requirements of the Dodd-Frank Act.

At the conclusion of the meeting, CFTC staff thanked counsel for presenting this information to it. Staff suggested that counsel submit a comment letter explaining their clients' situation, addressing the extraterritoriality reach of the Dodd-Frank Act to their clients, and providing their suggestions on how Dodd-Frank regulations should apply to Edge Act Corporations. Counsel agreed with this recommendation.