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VIA ELECTRONIC FILING

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

David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre, 1151 21st Street, N.W.
Washington, DC 20581

RE: Release No. 33-9204; 34-64372; File No. S7-16-11– Product Definitions Contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Ms. Murphy and Mr. Stawick:

The Reinsurance Association of America (RAA) appreciates the opportunity to comment on the joint notice of proposed rulemaking ("NPR") on product definitions contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or the "Act"). The RAA is the leading trade association of property and casualty reinsurers and life reinsurers doing business in the United States. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the U.S. and those that conduct business on a cross border basis.

Our September 20, 2010 letter commenting on the Advance Notice of Proposed Rulemaking noted that the terms "swap" and "security-based swap" (referred to interchangeably in this letter as "swap") were drafted very broadly in the Dodd-Frank Act. Our letter asked that the Commissions further define "swap" to clearly exclude reinsurance contracts.

We appreciate and support the Commissions' efforts in the NPR to clearly place insurance and reinsurance outside of the scope of the definition of swap. We provide the following comments to help further clarify the rules (our letter will reference the sections in the proposed rules in the Commodities Exchange Act (CEA) rather than both the CEA and the Securities Exchange Act):

1. Before finalizing these rules, we request that the Commissions review the rules to ensure that they do not conflict with other provisions of the Dodd-Frank Act, including the Nonadmitted and Reinsurance Reform Act (NRRA).

2. Request for Comment 2 asks whether the proposed criteria for identifying an agreement, contract, or transaction that would not fall within the swap or security-based swap definition appropriately encompass insurance and reinsurance products. Although most reinsurance contracts, in addition to insurance contracts, may fall under proposed rule 1.3(xxx)(4)(i), to avoid any confusion and ensure reinsurance contracts are considered insurance products, we recommend adding a new clause to proposed rule 1.3(xxx)(4)(i) stating that "**Any agreement, contract, or transaction which reinsures any agreement, contract, or transaction meeting the criteria of paragraph (xxx)(4)(i)(A)-(C) of this section is also an insurance product.**"

3. Request for Comment 7 asks whether there should be a requirement that, in order to qualify as insurance that is excluded from the swap definition, payment on an agreement, contract, or transaction may not be based on the price, rate or level of a financial instrument, asset, or interest or any commodity. We believe this criterion as drafted is inappropriate as crop insurance, for example, has a price of the commodity component. Other examples of insurance products that have some basis in the price, rate or level of a financial instrument, asset or interest in a commodity include variable life and annuity products; "dual trigger" insurance, such as replacement power insurance; property and casualty policies purchased by some commodity producers (e.g., oil refineries or copper mines), with deductibles that increase or decrease based on the price of the commodity the company produces; and event cancellation insurance that uses commodity indices to determine claims, weather insurance; and certain malpractice insurance.

4. Request for Comment 8 asks whether the requirement in proposed rule 1.3(xxx)(4)(i)(D) is an effective criterion. We do not believe this is an effective criterion and recommend that proposed rule 1.3(xxx)(4)(i)(D) be deleted. This provision reflects a rule that State insurance regulators have developed to protect the solvency of insurers. It is unrelated to what makes financial guarantee insurance an insurance product. If a State decided to change this rule for regulatory reasons, it could not do so without converting the insurance product into a swap pursuant to this proposed rule.

5. Request for Comment 9 requests feedback on the proposed interpretive guidance which states that certain insurance products would be outside the scope of the swap definition so long as they are provided in accordance with the second subpart (providers of insurance products) and are regulated as insurance. Those insurance products are property and casualty insurance, life insurance, health insurance, long-term care insurance, title insurance, surety bonds, and annuity products the income on which is subject to tax treatment under section 73 of the Internal Revenue Code. The Commissions acknowledge "that these insurance products do not bear the characteristics of the transactions that Congress subjected to the regulatory regime for swaps and security-

based swaps under the Dodd-Frank Act and that this guidance should appropriately place traditional insurance products outside of the scope of swap and security-based swap definitions."

We believe that this list of products should be included in the rules themselves and not only in the interpretive guidance to ensure that in the future these traditional insurance and reinsurance products are not unintentionally caught in the swap definition.

We also are concerned that the qualification of annuity by reference to taxation of income is too specific and may exclude annuity-type products. We also suggest that this provision be expanded to include annuity-type products, such as group annuity contracts, guaranteed investment contracts, synthetic GICs and funding agreements.

6. In response to Request for Comment 12, we believe proposed rule 1.3(xxx)(4)(ii)(A) is not an effective criterion as discussed below:

   - The language "and such agreement, contract, or transaction is regulated as insurance under the laws of such State or of the United States" should be removed because the product already must qualify as insurance under proposed rule 1.3(xxx)(4)(i) and because certain commercial insurance and reinsurance contracts may not be regulated but the company offering such contract is regulated.

     In addition, this language should be removed because it may inadvertently exclude some reinsurers. The rule requires the reinsurer to be subject to supervision by the insurance commissioner of any State and also appears to require the reinsurance transaction to be regulated as insurance under the laws of the *same* ("such") State. However, the NRRA in the Dodd-Frank Act provides that reinsurance transactions are governed by the State of domicile of the *cedant*, not of the reinsurer. Moreover, excess and surplus lines or non-admitted insurance products generally are not regulated by the *same* State in which the insurer is subject to supervision.

   - It appears that the proposed rule does not encompass all non-admitted and excess and surplus lines insurance. Some non-U.S. reinsurers and insurers offer direct insurance in the U.S. excess and surplus lines market, and many U.S. businesses procure insurance from non-admitted markets which are not required to obtain approved status by the NAIC or individual States. We request that the following language be added to the end of the proposed rule to clarify that non-admitted insurance provided by non-U.S. insurers and reinsurers is not classified as a swap:

"**and with respect to non-admitted and excess and surplus lines insurance, by a non-U.S. company that is regulated as an insurance or reinsurance company or a captive insurer or reinsurer by its domiciliary country's insurance regulator**."

- The proposed rule does not appear to allow a U.S. reinsurer to reinsure non-U.S. risk because that agreement, contract, or transaction would not not regulated by a State or the United States as required by the proposed rule, but rather would be regulated by the country of the ceding insurer. The proposed rule should be clarified to allow U.S. reinsurers to reinsure non-U.S. risk.

- The proposed rule could permit a non-insurer to deliberately fail the insurance exemption (i.e., by issuing a contract that would fail proposed rule 1.3(xxx)(4)(ii) because it would not be issued by an insurance company). In such case, the insurance product could be treated as a swap and not be subject to State regulation because Dodd-Frank preempts State regulation of swaps in Section 722(b).

7. In response to Request for Comment 15, we believe proposed rule 1.3(xxx)(4)(ii)(C) is overly broad and fails to reflect the realities of the State-based regulatory system. The proposed rule states, "in the case of reinsurance only, by a person located outside the United States to an insurance company that is eligible under the proposed rules, provided that: (1) such person is not prohibited by any law of any State or of the United States from offering such agreement, contract, or transaction to such an insurance company; (2) the product to be reinsured meets the requirements under the proposed rules to be an insurance product; and (3) the total amount reimbursable by all reinsurers for such insurance product cannot exceed the claims or losses paid by the cedant."

   - It is unclear what proposed rule 1.3(xxx)(4)(ii)(C)(1) is intended to encompass and whether it is intended to refer to a prohibition on the reinsurer, the transaction or the cedant, or all three. Moreover, this language is overly broad, ignores the realities of a State-based regulatory environment and should be removed. For example, it appears that a reinsurer could not offer a product in a State where that product is permitted if any other State prohibits that product. If one State legally permits a reinsurance product to be offered and the transaction is subject to that State's laws, another State's laws should not be relevant. Differences in State insurance laws are inevitable. As drafted, the provision is inconsistent with both the NRRA and the State-based system of insurance in the U.S.

   - Proposed rule 1.3(xxx)(4)(ii)(C)(3) would conflict with the State-based insurance receivership system in the U.S. In an insurance receivership, reinsurers are

required to comply with the reinsurance contract and pay all amounts due and owing to the estate (insolvent cedant), even though the estate may not necessarily pay the full amount of the underlying claim to the applicable policyholders. We suggest the following amendment: "(3) The total amount reimbursable by all reinsurers for such insurance product cannot exceed the claims or losses paid by the cedant **except as provided in State receivership law and regulation applicable to an insolvent cedant**."

8. We request that the following language be added to give the Commissions discretion to make a determination that a product is insurance even though it was inadvertently caught in the definition of swap: "Any other agreement, contract, or transaction which the Commission has determined constitutes insurance for purposes of section 1.3(xxx)(4)."

We appreciate your consideration of our views. Please contact us if any questions arise.

Respectfully,

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Kimberly M. Welsh
Vice President and Assistant General Counsel