Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

July 25, 2013

Michael Emerson
Head of Legal and Compliance
Australia and New Zealand Banking Group Limited, New York Branch
277 Park Avenue, 31st Floor
New York, NY 10172

Subject: Request for a transition period under section 716(f)

Dear Mr. Emerson:

Summary

This responds to the request you filed on behalf of the New York branch of Australia and New Zealand Banking Group Limited ("Branch") for a transition period under section 716(f) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd–Frank Act"). Section 716(f) provides that to the extent an insured depository institution qualifies as a swaps entity and would be subject to the Federal assistance prohibition in section 716(a),[1] the appropriate Federal banking agency "shall permit" a transition period of up to 24 months.[2] Section 716(e) provides that the prohibition on Federal assistance

[1] Section 716 prohibits the provision of "Federal assistance" to any entity defined under that section to be a "swaps entity" with respect to any swap, security-based swap, or other activity of the swaps entity. "Federal assistance" is defined in section 716 as "the use of any advances from any Federal Reserve credit facility or discount window that is not part of a program with broad-based eligibility under section 13(3)(A) of the Federal Reserve Act" and "[FDIC] insurance or guarantees" for certain specified purposes. The term "swaps entity" includes any swap dealer registered under the Commodity Exchange Act or Securities Exchange Act of 1934. Australia and New Zealand Banking Group Limited is provisionally registered as a swap dealer under the Commodity Exchange Act. For purposes of eligibility for Federal assistance, the Board of Governors of the Federal Reserve System has provided that "a U.S. branch or agency of a foreign bank is a Swaps Entity if the foreign bank is registered as a swap dealer under the Commodity Exchange Act or as a security-based swap dealer under the Securities Exchange Act." Federal Reserve Banks Operating Circular No. 10 (effective July 16, 2013). Section 716 is codified at 15 U.S.C. § 8305.

[2] The OCC issued guidance in January 2013 that provided notice to insured Federal depository institutions of procedures and conditions for requesting a transition period from the OCC. *See* Transition Period under Section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 78 Fed. Reg. 1306 (January

only applies to swaps or security-based swaps entered into after the end of the transition period.

The OCC is the appropriate Federal banking agency for the Branch.[3] Section 716(f) requires the OCC, in establishing the appropriate transition period, to take into account and make written findings regarding the potential impact of the Branch's divestiture or cessation of its swaps dealing on the Branch's mortgage lending, small business lending, job creation, and capital formation versus the potential negative impact on insured depositors and the Deposit Insurance Fund ("DIF") of the Federal Deposit Insurance Corporation ("FDIC") ("Statutory Factors"). Section 716(f) permits the OCC to consider such other factors as may be appropriate. Section 716(f) further requires the OCC to consult with and consider the views of the Commodity Futures Trading Commission ("CFTC") and Securities and Exchange Commission ("SEC"), as appropriate.[4]

As discussed below, the OCC has concluded that granting the Branch a transition period through July 16, 2015, as compared to the Branch's near-term divestiture or cessation of its swaps dealing or a significantly shorter transition period:

- is less likely to have a disruptive impact on mortgage lending, small business lending, job creation and capital formation;
- will have no direct impact on insured depositors; and
- will have no direct impact on the DIF.[5]

Consequently, the OCC is granting the Branch a transition period from today through July 16, 2015 ("24-month Transition Period").

Analysis and Findings

The OCC has evaluated the impact of divestiture or cessation of the Branch's swaps dealing on the Statutory Factors in the near term and after the 24-month Transition Period or a significantly shorter transition period. Overall, the OCC has found that the potential impact

8, 2013) ("January 2013 Guidance"). On June 5, 2013, the Board of Governors of the Federal Reserve System ("Board") issued an interim final rule, which provided that for purposes of Dodd-Frank Act section 716, the term "insured depository institution" includes any uninsured U.S. branch or agency of a foreign bank. *See* Prohibition Against Federal Assistance to Swaps Entities (Regulation KK), 78 Fed. Reg. 34,545, 34,549 (June 10, 2013). Consistent with the Board's interim final rule, the OCC provided notice to uninsured U.S. branches and agencies of foreign banks that they may request a transition period under the OCC's January 2013 Guidance. http://www.occ.gov/topics/capital-markets/financial-markets/trading/derivatives/706f.html

[3] 12 U.S.C. § 5301(2).

[4] The OCC consulted with and considered the views of the CFTC and the SEC, as appropriate.

[5] The OCC notes that as an uninsured federally licensed branch of a foreign bank, the Branch does not have any FDIC insured deposits. Australia and New Zealand Banking Group Limited does have a wholly owned subsidiary, ANZ Guam, Inc. ("ANZ Guam"), which is a state non-member bank insured by the FDIC. The transition period provided in this letter is limited to the Branch and does not apply to ANZ Guam. Additionally, the OCC notes that the Branch has represented that ANZ Guam does not provide any funding to the Branch.

of granting the 24-month Transition Period is less adverse than the potential impact of denying the transition period or providing a significantly shorter transition period. The lesser impact associated with the 24-month Transition Period results from lowering the probability of operational problems and market disruption that could occur if the Branch does not have a sufficient opportunity to restructure its swaps dealing in an orderly manner.

The OCC views an orderly restructuring of swaps dealing to be closely related to comprehensive implementation of title VII of the Dodd-Frank Act ("Title VII"). Development of Title VII is ongoing. The prudential regulators, CFTC and SEC continue to issue proposed rules, final rules, guidance and exemptive orders to implement Title VII. Although the Title VII regulatory structure is still being implemented, section 716 went into effect on July 16, 2013.[6]

The 24-month Transition Period will provide reasonable time for the Branch to develop a transition plan that provides for an orderly cessation or divestiture of swaps activities that is based on a more developed Title VII regulatory framework. For purposes of section 716, the Branch must: (1) determine whether to terminate the swaps activities or transfer them outside of the Branch, (2) identify an entity that may accept the swaps activities consistent with section 716, and (3) novate existing swaps outside of the Branch, if appropriate.[7] The novation of existing swaps may require entering into new master swap agreements with each customer and may also present operational risks. Operational risk is significantly heightened if the Branch and the entity accepting the swaps activities do not have the requisite time to complete these activities in an orderly fashion.

The 24-month Transition Period will permit the Branch to better evaluate whether to transfer the swaps activities outside of the Branch and what entity(s) is best positioned to accept its swaps business. The 24-month transition period also would permit the creation of a new entity, if necessary, and appropriate capital planning for any such entities that assume swaps activities.

In contrast, a significantly shorter or no transition period could result in disorderly termination or divestiture of swaps activities and considerable disruption to swaps markets and financial markets that could weaken lending markets and result in a similar negative impact on job creation and capital formation. In reaching our determination that the 24-month Transition Period is appropriate, we have considered each Statutory Factor on an individual basis, as well as the impact of a transition period on the Statutory Factors on a collective basis.

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[6] *See* Guidance on the Effective Date of Section 716 of the Dodd–Frank Wall Street Reform and Consumer Protection Act, 77 Fed. Reg. 27,456, 27,457 (May 10, 2012).

[7] Clients may request the transfer of some or all of their existing swaps to an entity outside of the Branch in order to preserve the netting benefits that come from transacting with a single counterparty.

The OCC makes the findings below regarding the impact of the 24-month Transition Period on the Statutory Factors.

Mortgage Lending

As discussed above, near term cessation or divestiture of the Branch's swaps dealing would increase the Branch's operational risk. Operational problems in swaps markets could easily disrupt broad financial markets since swaps are widely used by corporations, institutional investors and other financial market participants. A disruption to broad financial markets could indirectly disrupt mortgage-lending markets, leading to a slowdown in mortgage market activities and potential delays to qualified mortgage applicants.

The 24-month Transition Period will provide reasonable time for the Branch to develop and implement an orderly transition plan based on a more developed Title VII regulatory framework. This will significantly mitigate operational risk. Lower operational risk in turn decreases the probability of a financial market disruption that could adversely affect mortgage lending.[8]

Small Business Lending

The absence of a reasonable transition period would increase the Branch's operational risk and could cause financial market disruptions with respect to small business lending in the same manner as mortgage lending. In particular, if the Branch ceased swaps activities that require registration, current clients of the Branch would have to find an acceptable substitute swaps provider and/or find alternative means to hedge their particular risk. Failure to do so could result in the client not being able to hedge particular risk, either assuming additional risk or terminating the affected business activity or investment. The 24-month Transition Period would mitigate these risks and, in turn, mitigate the risk of a financial market disruption that could impair small business lending. Lower operational risk, in turn, would decrease the probability of a financial market disruption that could adversely affect small business lending.[9]

Job Creation

As discussed above, sudden and simultaneous cessation or divestiture of swaps dealing has the potential to cause general financial market disruption, and such a disruption to credit and capital markets could weaken job growth and have other negative macroeconomic consequences. Avoiding these potential market disruptions favors granting the 24-month Transition Period to the Branch.

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[8] The OCC understands from the Branch's request for a transition period that the Branch does not engage in mortgage lending in the United States. The OCC has considered the potential indirect impact a general market disruption could have on mortgage activity.

[9] The OCC understands from the Branch's request for a transition period that the Branch does not engage in small business lending in the United States. The OCC has considered the potential indirect impact a general market disruption could have on small business lending activity.

Capital Formation

As with mortgage and small business lending, a general financial market disruption or a disruption to the swaps market that diminishes the ability of firms to hedge risk would tend to weaken the ability of firms to attract and acquire capital. The potential hazard from a disruption in capital markets may be more immediate than other markets, since capital markets may react quickly to operational problems. This would be especially true for any financial institution that encounters any serious operational problems from section 716-related restructuring. Thus, not granting a sufficient transition period increases risks to individual financial institutions and to the banking system as a whole. The benefit of mitigating the risk of capital market disruption favors granting the 24-month Transition Period to the Branch.

Insured Depositors

The Branch is an uninsured federally licensed branch of Australia and New Zealand Banking Group Limited. The FDIC does not insure its deposits. Thus, granting the Branch a transition period will have no direct impact on insured depositors.[10]

The Deposit Insurance Fund

The DIF bears the risks associated with resolving an insured depository institution, including one that has failed because of problems related to its swaps dealing. This risk includes payouts from the DIF to insured depositors of the institution. However, as noted, the FDIC does not insure the Branch's deposits. Thus, the 24-month Transition Period will have no direct impact on the DIF.[11]

Conclusion

After considering the written findings set forth above, and consulting with the SEC and CFTC, the OCC hereby establishes a transition period under section 716(f) for the Branch

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[10] As discussed above, Australia and New Zealand Banking Group Limited's state non-member bank subsidiary, ANZ Guam, does have FDIC insured deposits. Although the 24-month Transition Period does not apply to ANZ Guam, the OCC notes that ANZ Guam insured depositors are fully protected from the risk of loss from a transition period because their deposits are protected by the DIF, which is in turn backed by the full faith and credit of the United States.

[11] The 24-month Transition Period could have an indirect impact on the DIF, including payouts to insured depositors at ANZ Guam. However, the OCC believes that it is also necessary to consider the risks to the DIF that could result from potential market disruptions under a scenario with an inadequate transition period for the Branch. An orderly restructuring of the Branch's swaps dealing poses less risk to the DIF than the Branch ceasing or divesting its swaps dealing without a sufficient transition period for further Title VII development. While swaps dealing does have inherent risks, the operational and reputation risks of a sudden cessation or divestiture, as discussed above, are more serious. These risks are more likely to cause market disruptions that threaten the DIF. On balance, the OCC believes that avoiding potential market disruptions and the negative effect they could have on the DIF support the 24-month Transition Period for the Branch.

from today through July 16, 2015.[12] The prohibition on Federal assistance in section 716(a) will apply to the Branch if it enters into certain swaps and security-based swaps after the end of this transition period. Due to the significant adverse consequences of this prohibition, we expect the Branch to limit its swap activities to those permitted under 716(d) by July 16, 2015 and to take reasonable steps during the transition period to achieve that result.

This approval and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. This approval is specifically based on the Branch's representations, submissions, and information available to the OCC as of this date. Any change in this information could result in a different conclusion. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have any questions concerning this letter, please contact Ted Dowd, Assistant Director, or Ellen Broadman, Director, Securities and Corporate Practices at (202) 649-5510.

Sincerely,

//signed//

Martin Pfinsgraff
Senior Deputy Comptroller
Large Bank Supervision

cc: Carlos Hernandez, Director, International Banking Supervision

[12] After consulting the CFTC and SEC, the OCC may extend the transition period by up to one year. Section 716(f).