March 7, 2011

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, DC 20581

Re: Core Principals and Other Requirements for Swap Execution Facilities – Proposed Rules (RIN 3038-AD18)(76 FR 1214)

Dear Mr. Stanwick:

Phoenix Partners Group LP submits this letter to the Commodity Futures Trading Commission ("CFTC") regarding its proposed rulemaking on Core Principals and Other Requirements for Swap Execution Facilities (the "Proposed Rules") under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act").

Phoenix Partners Group LP is the corporate parent and wholly owns Phoenix Derivatives Group LLC ("Phoenix"), a FINRA regulated inter-dealer broker. As an inter-dealer broker that that has, since 2005, provided a marketplace for, among other things, buyers and sellers of Credit Default Swap ("CDS") index and single name products, and intends to submit an application to register as a swap execution facility ("SEF")[1], Phoenix submits the following comments based upon our experience as an established broker in the over-the-counter ("OTC") credit swap marketplace and based upon our understanding of and experience in how the credit derivative products governed by the Act and the Proposed Regulations currently trade.

I. Requirements for registration (Proposed § 37.3)

In proposing § 37.3(b), the CFTC has commented that due to the potentially large number of applications for SEF registration that may be received,[2] the CFTC will

[1] We will also be registering as a security-based swap execution facility with the Securities and Exchange Commission.

[2] 76 FR 1216 and fn. 20.

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allow qualifying entities that will be required to register as a SEF the opportunity to receive grandfather relief, i.e., to operate while its SEF registration is pending. We agree with the CFTC that delays in the processing of SEF registration applications at the outset of the implementation of the Proposed Rules could have a significant adverse effect on the OTC swaps markets and could ultimately undermine the goals of the Act. Grandfathering of established, qualified inter-dealer brokers that are incumbents in the market and have a history of fostering market liquidity through voice brokering, electronic brokering and hybrid brokering at the time of submitting their application for SEF registration will enable the OTC swaps markets to continue to operate in an orderly fashion once the Proposed Rules take effect, and will prevent market disruption and the detrimental effects that could have on end-users and the economy.

With respect to the granting of grandfather status, the Proposed Regulations (§37.3(b)) provide that an applicant may submit a notice requesting that the Commission grant it temporary grandfather relief pending a determination of its registration application. The Proposed Regulations also state that in connection with a request for temporary grandfather relief an applicant must provide a certification that if granted such relief it will meet the requirements of Part 37. To avoid any market disruptions during the time that a request for temporary grandfather relief is pending, we believe that the CFTC should allow such applicants to operate as a SEF while awaiting a determination from the CFTC granting or denying the grandfather relief request. Such an approach would allow registrants, which are already fostering and providing marketplace liquidity, to continue to do so while awaiting the grandfather relief determination, and, because the registrant is certifying that it is compliant with Part 37, the risk of wholly unqualified registrants operating as SEFs is effectively eliminated.

II. Permitted execution methods (Proposed §37.9)

With respect to permitted execution methods, we comment in response to the CFTC's question "Should all orders and quotes be displayed to all participants or should alternative engagement rules apply on a pre-trade basis?" We believe that market participants will be more likely to make markets in particular OTC swaps, and thus there will be more liquidity in the OTC swaps marketplace, if market participants are allowed under certain circumstances to not display bids or offers to all participants. One way this can be accomplished under the Act is to only make responses to requests for quotes transparent to all market participants subsequent to execution. Our experience in the credit derivative market has shown us that participants will be much more likely to initiate, and respond to, RFQs if the nature of the request and the response to the request are not broadcast to the entire market. Simply put, if the CFTC does not allow for means for market participants to engage with less than the entire market, liquidity in OTC swaps will suffer greatly, with end users ultimately bearing the cost of the lack of liquidity.

Furthermore, while the Act undoubtedly mandates certain levels of pre- and post-trade transparency, we believe that the right balance of pre- and post-trade

transparency is essential to maintaining proper levels of liquidity in the OTC swaps market. In terms of pre-trade transparency, we believe that the rule set out in §37.9(b)(3) of the Proposed Rules, requiring traders who have executed against customer orders to post one side of such a trade on a SEF for 15 seconds, would inhibit market liquidity. Such a rule would deter market participants from fostering liquidity based upon customer orders because those market participants would have no certainty that they would be able to complete the order as negotiated, resulting in greater uncertainty for the market participant in its use of capital. Regarding post-trade transparency, of utmost concern under the Proposed Rules is the requirement that all block trades be reported within 15 minutes. In many instruments this rule will prevent market participants from engaging in block trades because the reporting of trades, which can jeopardize the anonymity of the trade, in such a short time period will prevent the market participant from being able to offset the risk of the block trade. The 15 minute reporting requirement will most likely diminish liquidity in many instruments, and the reporting time therefore should be increased, with end-of-day reporting being one means to allow the market participant engaging in a block trade to offset the risk it took on by engaging in a block trade.

III. Access Requirements (Proposed §37.202)

Impartiality with respect to the treatment of SEF members and market participants, including but not limited to impartiality with respect to access to SEF's and enforcement of a SEF's rules, is an appropriate principle for achieving the Act's goal of expanding access to the OTC swaps market. However, the concept of requiring "comparable fees for participants receiving comparable access to, or services from, a swap execution facility" should be a flexible one, allowing SEF's to set access standards, both with respect to fees and volume of transactions, that reflect the costs of operating a SEF and are consistent with a market participant's ability to engage in the trading of OTC swaps.

IV. Rule enforcement program (§§ 37.203, 37.204, 37.206) and Position limits or accountability (§37.601)

We believe the Act and the Proposed Rules have improperly placed the responsibility for oversight of the trading activities of market participants, in particular the role of monitoring positions of market participants, in the hands of SEFs. Generally speaking, SEFs will provide essential data and information about the activities of market participants as it relates to their compliance with applicable rules. However, SEFs will simply not have sufficient data and information, in particular a view into market participants' positions and daily market-wide trading activities, to be able to effectively monitor trading positions. As the regulatory scheme is currently constructed, the only trading and/or position information a SEF will have will be based upon the market participants' activity on its platform. In light of the fact that market participants will be allowed to trade on multiple SEFs, any one SEF's information concerning a market participant's position will be virtually meaningless, as the market

participant could well have sold a large position on one SEF while simultaneously having bought the same amount of the instrument on another SEF. Both transactions may have, in isolation, been in violation of the market participant's position limit, but taken as a whole the market participant's aggregate position in the product will be net neutral. This one hypothetical scenario shows the disadvantage individual SEFs will be at in attempting to meet the Act's goal of ensuring that market participants trade with established limits.

Ultimately, there are other entities that are far better suited to undertake position monitoring. Dealers, and other clearing members who act as agents for their clients, presently monitor their clients' trading positions, and are best positioned to do so once the final rules take effect. Next, the swaps data repositories ("SDRs") in conjunction with the derivative clearing organizations ("DCOs") are best positioned to track trading positions and hence position limits for dealers and clearing members. (Because there are some swap trades that will not need to be cleared under the Act, the DCOs alone cannot monitor the trading positions of dealers.) In light of this potential two-tiered structure for position monitoring, it may be necessary for the CFTC or its designee to have the ultimate responsibility for ensuring that market participants to not exceed their position limits.

SEFs can, and will if required, monitor position limits of market participants based upon the trading activity that takes place on the SEF's platform. We are fully able to implement the necessary risk controls required by the Proposed Rules, such as pausing and halting trading (§37.405) based upon guidelines set forth by the CFTC. However, the CFTC may need to look to other parties to ensure proper monitoring of market participant's positions.

V. Core Principle 13—Financial resources (§ 37.1300); General requirements (§37.1301); Types of financial resources (§37.1302); Computation of financial resource requirement (§37.1303); Valuation of financial resources (§37.1304)

Because a SEF does not take positions or hold positions in any of the products traded on it, an orderly wind-down of a SEF, one that that would result in no disruption to the OTC swaps market, would take significantly less than one year. Therefore, we recommend that SEF's be required to maintain financial resources necessary to operate the SEF for a period of six (6) months, with the requirement that three (3) months operating expenses be unencumbered, liquid financial assets. See §37.1305. Six months of operating costs is more than sufficient for a SEF to wind down its activities, in particular because a SEF will not have to unwind positions, and because there will be numerous other SEFs in the marketplace that will be available to market participants and to ensure that liquidity is not impacted by one SEF's wind-down.[3] This six month

[3] The CFTC indicated that "although the public estimate regarding the expected number of applications ranges from 30 to 40, certain market participants have noted that the number of SEFs could exceed 100." 76 FR 1216, fn. 20.

operating expense requirement would be two times the fixed overhead requirement imposed by the United Kingdom Financial Services Authority, which requires similar financial services companies to maintain three months of operating capital at all times. See FSA GENPRU 2.1.54.

The CFTC invited commenters to recommend particular financial resources for inclusion in the final regulation. We believe that, among other financial resources, the CFTC should include and enumerate in §37.1302 the following financial resources: assets of a parent company that wholly owns the SEF, and, subject to §37.1304 (Valuation of financial resources), the SEF's accounts receivable from SEF members. As long as the parent company has committed to guarantee the financial resource obligations of the SEF, those assets would be available to the SEF and would therefore be an appropriate financial resource for the CFTC to include. Similarly, as long as the SEF properly values its accounts receivable as required by §37.1304, those monies owed to a SEF by its customers are easily obtainable by a SEF and therefore are appropriate for inclusion by the CFTC.

VI. Phasing-In

The CFTC has proposed that final regulations should become effective 90 days after publication in the Federal Register. Swaps trading in the United States is a complex, multi-trillion dollar market which has developed organically over a period of decades. While the Proposed Rules are currently available to the general public, requiring that the market be able to adapt to final regulations within 90 days of receiving notice of them runs the risk of adversely affecting liquidity in the swaps marketplace. We recommend a "phased in" approach which would allow the markets to properly adapt to the wholesale changes envisioned under the Act.

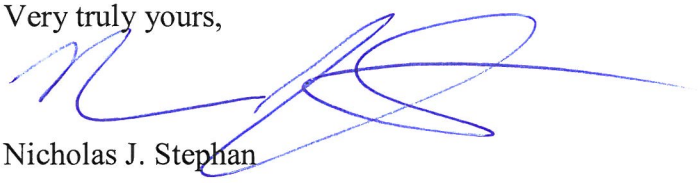
We fully support both the move to a central clearing model and many aspects of post-trade data dissemination being implemented 90 days subsequent to the publication of the final regulations in the Federal Register. The benefits to the swaps marketplace from these provisions cannot be understated. However, we believe that other portions of the final regulations should be phased in over time. For example, the requirements under §37.9 (Permitted Execution Methods) envision changes which will fundamentally change the OTC swaps marketplace. In addition, the Proposed Rules envision SEFs contracting with regulatory service providers to provide assistance with complying with certain core principals under §37.204. As of today, it is uncertain if any regulatory service providers will be ready to undertake this responsibility upon the proposed effective date. As the CFTC has correctly determined that a third party may be better placed to enforce certain provisions of the final rules under the supervision of the SEF, the implementation of those rules should be delayed until the CFTC is satisfied that there is a party that is capable, willing and ready to undertake this role.

In addition, the ability of the CFTC to continue to study the possible effects of these key changes during a phase-in period has tremendous value. Given the tight

timeframe the CFTC has been forced to work within to implement the Act, any "breathing room" provided for in the final rules can be utilized to help ensure that the regulatory regime is properly tailored to the products it is intended to cover.

In conclusion, allowing additional time for the markets to adapt to a portion of these changes during a phase-in would reduce the possibility of disrupting the overall marketplace during the transition, which would result in reduced liquidity and have the perverse effect of harming those parties intended to be helped under the Act.

Very truly yours,



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